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# SCOPING STUDY: URBAN LAND ISSUES

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## FINAL REPORT

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PREPARED FOR DFID-SA BY:



AND DEVELOPMENT WORKS

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## GLOSSARY & ACRONYMS

BCDA: Black Communities Development Act

BESG: Built Environment Support Group

Brown field project: A project on land that was previously developed.

Bulk infrastructure: Major services outside the boundary of a project required to link up infrastructure in the project to the urban service networks, e.g. trunk sewer lines and pump stations.

CBD: Central business district

CMIP: Consolidated Municipal Infrastructure Programme

CPA: Communal Property Association

DAG: Development Action Group

DFA: Development Facilitation Act

DFID: UK Department for International Development

DLA: Department of Land Affairs

ESTA: Extension of Security of Tenure Act

Green field project: A project on vacant land that has not been developed before.

Ha: Hectare (10 000 m<sup>2</sup>)

IDP: Integrated Development Plan

LPM: Landless People's Movement

LRAD: Land Redistribution for Agricultural Development

PHP: People's Housing Process

PIE: Prevention of Illegal Eviction From and Unlawful Occupation of Land Act

USN: Urban Sector Network

## 1. INTRODUCTION

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The objective of this scoping paper is to inform DFID's design of a long-term programme of support for land issues in South Africa, by highlighting what the key land issues in urban areas and potential gaps in policy and practice are. The focus is on the needs of the urban poor with regard to land in urban areas.

The paper is based on the experience of the Urban Sector Network and Development Works in urban land issues, a review of relevant literature, and discussions with the following stakeholders: Anton Arendse, Department of Housing, 21 August 2003; Cathy Glover, People's Dialogue/ uTshani Fund/ Homeless People's Federation, 7 August 2003; Jens Kuhn, City of Cape Town, 7 August 2003; Johann Olivier, City of Johannesburg, 26 August 2003; Yusuf Patel, Department of Provincial and Local Government, 27 August 2003; Yondela Selemela, Department of Provincial and Local Government, 27 August 2003; Glen Thomas, Department of Land Affairs, 21 August 2003; Norah Walker, City of Cape Town, 24 July 2003. Further inputs were received at the Multi-Stakeholder Workshop on 3 September 2003, and written inputs were received from Ronald Eglin of Afesis-Corplan, Anton Krone of the Built Environment Support Group (BESG), Kobus Pienaar of the Legal Resources Centre (LRC), and the Centre for Development and Enterprise (CDE).

The underlying assumption of this paper is that, although the current formal land registration and transfer system is too complex and expensive for the needs of the urban poor, this system needs to be transformed and made more flexible in order to ensure that urban poor households are able to get access to formal, documented property rights that are defensible in court and which, in the case of ownership, are tradeable on the property market and which can potentially contribute to using property as collateral for credit. It is acknowledged, however, that there is scope for informal tenure options and interim forms of tenure to provide security of tenure in certain urban contexts, and that experiences of tenure in rural areas need to be looked at in this regard.

In this paper, "urban areas" are defined as including peri-urban areas characterised by peripheral dormitory-type townships that are essentially urban in character, although spatially dislocated. Examples of such peri-urban settlements include Atlantis in the City of Cape Town area and Botshabelo in the Mangaung municipal area, both of which are approximately 50km from the city centre, considerably beyond the urban edge of the contiguously built up area. Land issues relating to peri-urban areas that are essentially rural in character, e.g. the communal tenure areas to the north and south of Durban, are excluded from the scope of the report.

Firstly, the context of the urban poor and land is looked at: the South African urban context, categories of the urban poor in relation to their access to land, and the value that land has for the urban poor. Secondly, formal and informal processes relating to urban land issues, and the organizations involved, are briefly reviewed (these are discussed in more detail in Appendices 2, 3 and 4). Finally, key issues relating to urban land are identified and discussed. The key issues are grouped into five clusters: delivery programmes for providing urban land for the poor, sustainable livelihoods and the needs of the poor, formal processes and organizations, property market issues, and informal processes.

## 2. THE POOR AND URBAN LAND

The objective of the scoping study is to identify key issues and gaps for possible interventions in favour of the interests of the poor. It is therefore important that the needs of the poor with regards to urban land are looked at and the varying ways in which urban land is used by the poor are unpacked. This chapter consists of the following sections:

- Categories of the urban poor in terms of their access to land
- Value of urban land for the poor/ sustainable livelihoods

It is important to note that there are a range of different types of urban settlements, and land issues may differ between different types of settlements. The South African urban hierarchy can be regarded as consisting of four broad types of urban settlement (as per CSIR, 1999): metropolitan areas/cities, large towns, small towns and displaced urban settlements. 33% of South Africa's urban population lives in metropolitan areas/cities, 11% in large towns and 10% in small towns (no separate population figures are available for displaced urban settlements – they are largely included in the population figures for metropolitan areas/cities).

*Table 1: Typology of urban settlements*

Type of urban settlement	Number of settlements	Approximate population	Examples
Metropolitan area/city	10	500 000+	Johannesburg, Cape Town, Durban, Pretoria, Ekurhuleni (East Rand), Emfuleni (Vaal/ Vereeniging), Port Elizabeth, Bloemfontein, East London, Pietermaritzburg
Large towns	42	50 000+	Nelspruit, Kimberley, Krugersdorp, Grahamstown, Stellenbosch
Small towns	-	<50 000	Beaufort West, Musina, Mooi River
Displaced urban settlements	-	varies	Atlantis, Botshabelo

Source: based on CSIR, 1999

*Table 2: Urban/rural populations of provinces*

Province	Metro areas/ cities	Large towns	Small town*	Rural**	Total
Eastern Cape	1 351 000	361 000	593 000	3 998 000	6 303 000
Free State	512 000	800 000	495 000	827 000	2 634 000
Gauteng	6 075 000	581 000	474 000	218 000	7 348 000
KwaZulu-Natal	2 920 000	500 000	208 000	4 789 000	8 417 000
Limpopo	0	342 000	199 000	4 388 000	4 929 000
Mpumalanga	0	687 000	408 000	1 706 000	2 801 000
Northern Cape	0	226 000	363 000	251 000	840 000
Northwest	0	440 000	732 000	2 183 000	3 355 000
Western Cape	2 557 000	480 000	479 000	441 000	3 957 000
Total	13 415 000	4 417 000	3 951 000	18 802 000	40 584 000

\* Urban population from 96 Census less metro/city and large town populations

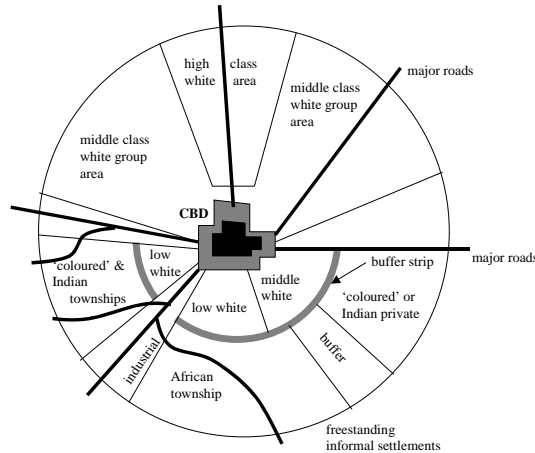
\*\*Non-urban population from 96 Census

Source: USN, 2003, from Municipal Demarcation Board figures.

Within urban settlements there are also distinct types of areas. South African urban settlements are characterized by apartheid spatial patterns, with largely racially segregated residential areas and with the urban poor generally living on the periphery of urban areas (see diagram below). Although there has been a

limited amount of integration and spatial restructuring since 1994, new low-income housing delivery (with a few exceptions, e.g. Cato Manor in Durban) have tended to reinforce these patterns. Table 3 shows the types of areas where the urban poor typically live. Urban plans introduced post-1994 have had a number of objectives, most notably compaction and integration, in order to get better functioning, more equitable urban settlements where all residents can have adequate access to urban opportunities. Key tools of urban plans have typically included setting “urban edges” to contain urban sprawl, and promoting the densification of “activity corridors” along major public transport routes. It is generally agreed that spatial planning has only had a limited effect on post-apartheid urban spatial development, however (e.g. Watson, 2003).

**The Apartheid City**



After R.J. Davies, “The spatial formation of the South African city”, *GeoJournal* (Supplementary Issue 2, 1981).

*Table 3: Typology of low-income areas in South African cities*

Type of area	Sub-type of area	Description
Urban core (close to CBD)	Inner city high rise flats	Areas comprising high proportions of medium and high rise rented and owned flats close to CBDs, e.g. Hillbrow in Johannesburg and Albert Park in Durban.
	Core townships	Formal mass-built settlements (old or new) within towns or cities, including backyard shacks, with short travel distances to places of employment, e.g. the formal Alexandra township in Johannesburg, or a township adjacent to a small town.
	Core informal settlements	Previously or currently illegal, unplanned (often infill) settlements within towns or cities close to places of employment, e.g. parts of Cato Manor in Durban and parts of Alexandra in Johannesburg.
Urban fringe (<25 km from city centre)	Fringe townships	Planned, low cost settlements, including 1960s townships, backyard shacks and flats, new starter housing, and sites and services, with moderate distances to places of employment, e.g. Soweto in Johannesburg, Umlazi in Durban, and Khayelitsha in Cape Town. Also typically within fringe townships are collective dwellings (hostels and similar institutions housing single people or households who rent from their employers or the municipality), and infill informal settlements on vacant land between formal development.
	Fringe informal settlements	freestanding, previously or currently illegal, unplanned settlements whose inhabitants commute moderate distances to places of employment, e.g. Ivory Park in Midrand, Wallacedene in Cape Town.
Displaced urban settlements (>25 km from city centre)		Townships like Atlantis and Botshabelo, which are essentially completely urban; peri-urban informal settlements where a majority of residents commute to the urban area; former homeland border towns and townships (also known as 'betterment settlements'), sometimes adjacent to industrial decentralisation points.

Source: CSIR, 1999

## 2.A. Categories of the urban poor in terms of their access to land

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Poverty is a multi-dimensional problem. The aspects of poverty include (Navarro, 2001):

- Economic dimension of poverty: “income poverty”
- Social dimension of poverty: “capacity poverty”
- Environmental dimension of poverty: “habitat poverty”

Access to urban land can play an important role with regards to all three dimensions of poverty. Although it is recognized that poverty has many dimensions, and income alone is not an ideal measure of poverty, for practical reasons the “urban poor” are loosely defined in this report as households with incomes of less than R3500 per month (which is the income limit for housing subsidy eligibility). It should be noted that many households in the R3500 – R6000 per month income group, although they cannot be defined as “poor”, are also unable to access land and housing through the formal market due to the lack of access to credit and the lack of an effectively functioning housing market.

It should be noted that poverty in urban areas is often underestimated – it is a common misperception that poverty is always worse in rural areas and that people in urban areas are always better off than people in rural areas (Satterthwaite, 2003).

This section broadly categorises the urban poor in terms of their access to urban land and their urban land needs. It is important to disaggregate the urban poor in terms of their access to land so as to be able to understand their different needs and the differing ways in which actions can impact on them. It should be noted that there is a severe lack of reliable statistical data in South Africa, so it is only possible to quantify these categories to a limited extent.

The main distinction is between those with access to formal security of tenure and those without. It is important to note that security of tenure does not imply ownership – other forms of tenure, such as rental, can also provide security of tenure. It must be emphasized that there is no clear division between formal and informal tenure, so there is a grey zone that exists somewhere between the two ends of the continuum of formality/informality. Table 4 gives simplified examples of the continuum of formality/informality for the rental of a backyard structure and for a brick/block house in a township.

Secure tenure is defined by United Nations HABITAT as “protection from involuntary removal from land or residence except through due legal process” (Herr and Karl, 2002). The security derives from the fact that “the right of access to and use of the land and property is underwritten by a known set of rules, and that this right is justiciable” (UN-HABITAT, 2003). “The granting of secure tenure is the single most important catalyst in the mobilising of individual investment in the locality. The insecurity of tenure is, likewise, often associated with the marginalisation of individuals and communities, to a concomitant lack of investment, and as a contributory factor to petty criminality and challenges to urban governance generally” (ibid). UN-HABITAT uses lack of investment in housing as a proxy for lack of security of tenure in urban areas, e.g. people living in shacks in informal settlements (Herr and Karl, 2002).

Although in rural areas there is a shift away from seeing only formal tenure as secure tenure (e.g. Van den Brink, 2003), this is currently largely, though not completely, the reality in urban areas: in urban areas, secure tenure generally means having formal, documented rights that can be proved in court, e.g. a Title Deed, a use agreement (for communal tenure bodies such as co-operatives), or a lease agreement. In many cases, informal tenure can grant *de facto* security of tenure equivalent to or even greater than that of formal security of tenure, but the frequent evictions or threatened evictions of residents of informal settlements and backyard shack dwellers, and the symptomatic lack of housing investment in informal settlements and backyard shacks,



would seem to suggest that is a distinction between the degrees of security afforded by formal and informal tenure. The reality is that households without formal security of tenure, such as households informally renting accommodation, are subject to various stresses that can affect their livelihoods strategies and are also frequently excluded from government development programmes tied to formal security of tenure (Msunduzi Municipality, 2003).

Table 4: Examples of continuum of formality/informality

TYPE OF ACCOMMODATION	INFORMAL →		← FORMAL
	Ownership of a brick/block house in a township	“Owner” of a house on an illegally subdivided plot	Unregistered “owner” of a house on a legally subdivided plot informally purchased from the legal owner
Rental of a backyard structure	Tenant of a backyard shack without written rental agreement	Tenant of a “formal” backyard structure (meeting all planning and building regulations) without written rental agreement	Tenant of a formal backyard structure with written rental agreement*

\* A rental agreement does not have to be written, and a verbal agreement can be legally binding, but in practice it is extremely difficult for a tenant to defend their rights if there is not a written agreement (and the Rental Housing Act gives tenants the right to request that the rental agreement be in writing).

Table 5: Categories of the urban poor in terms of their access to land

Informal tenure	Formal tenure
<ul style="list-style-type: none"> <li>• Informal settlement households</li> <li>• Informal tenants/ sharers (backyard shack, house, room in a house)</li> <li>• Irregular subdivisions</li> <li>• Street people</li> </ul>	<ul style="list-style-type: none"> <li>• Individual owners</li> <li>• Tenants (renting a formal unit, with a written rental agreement complying with the Rental Housing Act)</li> <li>• Communal tenure (CPA, Co-op)</li> </ul>
Grey sector	
<ul style="list-style-type: none"> <li>• Unregistered owners</li> <li>• Sub-tenants</li> <li>• Domestic workers</li> </ul>	
New households	
<ul style="list-style-type: none"> <li>• New household formation</li> <li>• Migrants</li> </ul>	

### Informal tenure

Urban poor households without formal tenure (although they may have certain rights in terms of legislation or verbal agreements) include households in:

- Informal settlements, i.e. settlements on unlawfully occupied land. The *de facto* security of tenure can range widely, from settlements on public land that have a degree of formal recognition to settlements on private land faced with the threat of eviction. The 2001 Census counted 1.38 million households (about 7 million people, using the average size of 5 people for African households) in informal settlements.
- Irregular subdivisions, i.e. where land has been informally subdivided, serviced (often through illegal connections into service networks) and developed. No figures are available, but this is probably a fairly small number.
- Backyard structures, ranging from shacks to formal “flatlets”, and overcrowded formal housing, e.g. renting or sharing a room in a house. Security of tenure can vary greatly. The 2001 Census counted

460 000 households (about 2.3 million people) in backyard shacks and 530 000 households (about 2.7 million people) in formal backyard structures and rented/shared rooms within houses, a total of 990 000 households (about 5 million people).

- “Unregistered” occupants of hostels: no national figures available.
- “Street people”: no national figures available; a 1999 survey of street people in Cape Town recorded 4133 people who lived on the streets 24 hours a day (WCHC/DAG, 2003), and there an estimated 4500 street people in Johannesburg (City of Johannesburg, 2003).

Table 6: Households in shacks and backyard structures/structures on shared properties

Category	Eastern Cape	Free State	Gauteng	KwaZulu-Natal	Limpopo	Mpumalanga	Northern Cape	North West	Western Cape	South Africa
Households occupying shack not in backyard	135 567	147 081	448 393	177 212	56 930	92 877	20 438	155 501	142 706	1 376 706
Households occupying backyard shacks	31 205	44 103	185 767	48 613	21 205	24 503	5 355	51 935	46 840	459 526
Households occupying house/flatlet/ room in backyard or on shared property*	50 492	26 142	236 086	90 597	31 902	25 353	6 279	32 349	33 781	532 983
Total	217 264	217 326	870 246	316 422	110 037	142 733	32 072	239 785	223 327	2 369 215

\* Not all households occupying backyard structures or renting/sharing rooms within houses are necessarily urban poor households living in overcrowded conditions with no formal security of tenure, but the majority probably are.

Source: Statistics South Africa, 2003

Table 6 shows that there are probably over 2 million urban poor households (more than 10 million people) without formal tenure in South Africa. Assuming that about half of households in houses/flatlets in backyards or on shared properties and households renting/sharing rooms within houses can be regarded as landless, there were 2.1 million landless urban households (about 10.5 million people) in 2001. Even if only households in informal settlements and backyard shacks are regarded as urban poor households without secure formal tenure, there are 1.8 million of these households (about 9 million people).

### Formal tenure

Urban poor households with formal security of tenure include:

- Legal individual owners: legal owners of properties (sometimes called “freehold title”). Prior to the mid-1980s very few urban poor households fell into this category, but virtually all low-income housing delivery (with the exception of a relatively small number of social housing projects) is now aimed at granting individual ownership. It should be noted that not all legal owners have been officially issued with Title Deeds yet – even in many of the site and service projects implemented in the early 1990s (i.e. about 10 years ago) none of the owners have been issued with Title Deeds yet, which has caused delays for many consolidation subsidy projects. No figures are available with regards to how many owners have not been issued Title Deeds. In the 1990-1994 period, approximately 700 000 households received serviced sites for individual ownership. Since 1994, about 1.2 million households have received new serviced sites/houses for individual ownership and the ownership of public rental housing has been transferred to about 400 000 households. This gives a total of approximately 2.3 million new low-income property owners since 1990.
- Tenants: households with formal rental agreements, e.g. tenants in public rental housing, tenants in non-profit social rental housing, tenants in private rental housing, registered hostel residents. There are

about 300 000 public rental housing units, but this number is decreasing rapidly as units are transferred to individual ownership. Official figures (Department of Housing, 2001) show an estimated 280 000 residents in public sector hostels, but the actual number of residents is likely to be considerably higher than this.

- Communal ownership: members of communal tenure bodies, e.g. Co-operatives, Communal Property Associations. There are only a handful of these institutions, most notably Cope Housing Association's co-operatives in Johannesburg (e.g. Newtown and Troyeville) and Communal Property Associations in Homeless People's Federation green field projects (e.g. VukuZenzele in Cape Town).

### *Grey sector*

Households with tenure rights in the grey zone between formality and informality include:

- Unregistered individual owners: occupants of properties who have informally acquired properties through purchase, inheritance or some other form of exchange (e.g. swapping), but are not the legal owners. Surveys of consolidation projects have shown that between 10% and 34% of residents in site and service projects (with an average of 20%) did not qualify for consolidation subsidies, mainly because they were not the original allocatees (USN, 2003). A survey of post-1994 housing subsidy projects in metro areas/cities/large towns found that the number of informal transfers ranged from 0% to 13%, with an average of 2% (ibid). If these tentative average proportions are applied to all serviced sites and subsidy houses, there could be about 150 000 *de facto* owners of properties who are not the legally registered owners.
- Sub-tenants: Sub-tenants are people renting from tenants. In many cases, e.g. in social housing projects and public rental housing, this is technically illegal. Although not strictly illegal (yet), a small proportion of subsidized houses are also rented out, typically for R300 per month (USN, 2003) – the owner of the subsidized property sometimes lives in an informal settlement while collecting the rent. Many of the tenants are people who would not qualify for subsidies; in one housing subsidy project in Cape Town the majority of occupants are believed to be tenants, but this is fairly unusual – a survey of housing projects across South Africa found less than 1% of properties occupied by tenants (USN, 2003).
- Domestic workers: The tenure status of domestic workers living on the employer's premises can vary. Domestic workers sometimes live in accommodation provided by tenants for years, but the perceived security of tenure is not high (Bamford, 2003).

### 2.B. Value of urban land for the poor/sustainable livelihoods

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The value of land for the urban poor has to be seen within the context of sustainable livelihoods. A livelihood comprises "the capabilities, assets (including both material and social resources) and activities required for a means of living. A livelihood is sustainable when it can cope with and recover from shocks and stresses and maintain and enhance its capabilities and assets both now and in the future, whilst not undermining the natural resource base" (Carney et al, 1994: 4). Desirable livelihood outcomes can include: more income, increased well-being, reduced vulnerability, improved food security, more sustainable use of natural resource base. Land is an important asset that can play an important role in the sustainable livelihoods strategies of the urban poor, and the potential role of access to land and secure tenure in reducing poverty and vulnerability needs to be understood. The value of urban land (e.g. a private residential plot) to the poor can include the following:

- Land is a natural asset that provides space for other physical assets, such as housing.
- Land provides living/social space (family life, sleeping, cooking, eating, relaxing, studying, socialising, etc.).
- Land can give access to infrastructure (roads, water, sanitation, electricity).

- Land can be an economic asset that can be sold or bequeathed to one's heirs, and that can potentially be used as collateral for credit.
- Land can be used for income generation purposes, for example, through providing space for home based micro-enterprises, for providing the opportunity for generating income through the rental of accommodation, through the renting out of rooms/backyard accommodation, and for providing space for urban agriculture (vegetables, maize, livestock, etc.); for example, a survey of found that 54% of the 170 households surveyed in the low-income settlement of Kings Flats, Grahamstown, had established vegetable gardens and that incidence of vegetable gardens established increased with time; households also kept a full range of domestic animals including cattle, donkeys, goats, pigs, fowls and dogs (Moller, 1991, in USN, 2003). Land can play an important role in "livelihood diversification", i.e. where a household has more than one livelihood strategy in order to reduce vulnerability.
- Land can be a political asset that acts as a key mechanism for accessing rights. Some of the socio-economic rights in the Constitution, e.g. adequate housing and basic services (e.g. free water and electricity), can only be fully accessed by households with formal tenure. In the Grootboom Case (2000), the Constitutional Court specifically recognised the linkage between the right to land and the right to adequate housing (SAHRC, 2003).
- Land can be a social asset: it can be a basis for membership networks of trust and reciprocity, and for membership of community organisations. Social support networks play an important role in the survival strategies of poor households. Social networks can include *stokvels* (savings clubs), burial clubs, church groups, kinship groups based on membership of the same clan, people who speak the same home language or groups of friends (Smit, 2000). Land can play an important social role in that it can provide opportunities for assisting relatives or friends with permanent or temporary accommodation, and also plays a role in hosting certain cultural practices. This cultural value of land goes beyond the value of land for livelihoods strategies. Access to land gives rise to a range of social obligations and relationships. The social relationships resulting from formal tenure are commonly seen by the urban poor as being different from those arising from informal tenure in informal settlements or communal tenure in rural areas. For example, it was noted in the dramatic social changes that occurred when the residents of the Marconi Beam informal settlement in Cape Town were relocated to the adjacent formal housing project of Joe Slovo Park, that the informal settlement had been seen as being rural - an *ilali*, a rural village- and that people's perceptions that it was the same as a rural area shaped their social relations and interaction: residents felt that Marconi Beam "is a rural area and you can borrow whatever you need from someone that you know or feel close to", whereas "Joe Slovo Park is a 'town', one must have [one's] own things..." (Yose, 1999: 82).

It should be noted that access to land as an asset does not depend upon ownership – renting or leasing land can also provide similar benefits (apart from its economic asset value). It should also be noted that there are different types of urban land, depending on what it is used for (or is allowed to be used for):

- "Residential" land (in practice, in low-income areas, "residential" plots are also used for home-based enterprises such as spaza shops, shebeens and crèches, and newly proposed zoning schemes generally recognise this).
- Agricultural land
- Commercial/industrial land
- Local authority-owned land for community facilities
- Local authority-owned public open space
- Municipal commonages: land owned by the municipality which in terms of regulations can be used by residents for livestock grazing (or, less frequently, cultivation of crops); municipal commonages are generally only found adjacent to small towns.

- Communal ownership land (e.g. co-operatives), which may include residential, agricultural and commercial/industrial space.

Whereas in rural areas, communal or public land can be all-important, the value of urban communal or public land to the poor is generally narrower than that of urban private land. Communal or public land still plays a vital role, especially for the urban poor, whose access to private space is often inadequate or cater to all their needs. The value of urban land can include:

- Providing space for economic activities, e.g. markets, urban agriculture (vegetables, maize, livestock, etc.)
- Providing space for social activities/ community facilities, e.g. parks, sports fields
- For improving the living environment of the neighbourhood, e.g. trees, plants
- For cultural reasons, e.g. initiation rites, plants for traditional medicines.

### 3. LEGAL/INSTITUTIONAL FRAMEWORK GOVERNING URBAN LAND

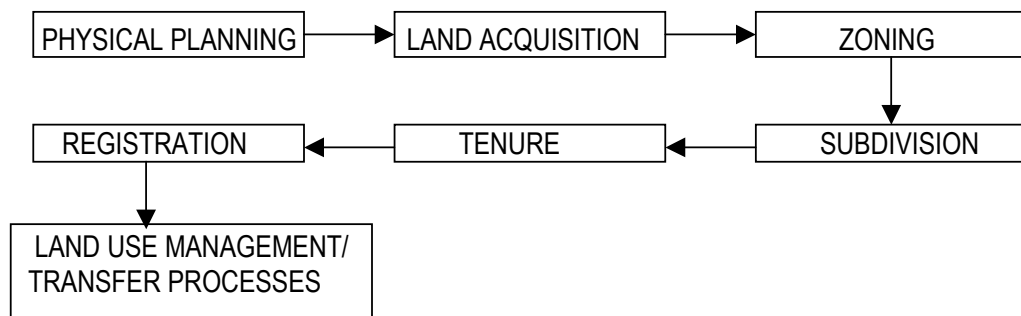
The legal/institutional framework governing urban land is briefly reviewed in two sections:

- Formal and informal processes/organisations
- Delivery programmes

Formal and informal processes and organisations are discussed in greater detail in Appendices 2, 3 and 4 respectively.

#### 3.A. Formal and informal processes/ organisations

There are a number of steps involved in the allocation and use of urban land, as represented by the diagram below. Formal processes, with legislation, regulations and implementing/administering institutions exist for all these steps, but similar steps can also be undertaken informally. For example, in the case of the planned unlawful occupation of a vacant piece of land, the community would select a suitable site, occupy it, informally lay it out and allocate “plots” and communal areas, and *de facto* tenure arrangements would then be regulated by community leaders (as would the subsequent sale and purchase of structures).



#### *Physical planning*

Physical planning involves determining where further urban development will go and the nature of that development. There are an overlapping range of policies and regulations with regard to physical planning from

a variety of government departments, including Integrated Development Plans (IDPs), spatial development frameworks, environmental management laws and housing land plans.

### *Land acquisition*

Formal land acquisition processes occur through the market or through expropriation (in terms of the Expropriation Act). Estate agents, who facilitate the sale and purchase of property, are regulated by the Estate Agents Act.

### *Land development procedures (subdivision/rezoning)*

Land development procedures consist of the procedures for the rezoning of permitted land uses and the subdivision/consolidation of land). There are a variety of routes for land development:

- Conventional procedures, e.g. the Town Planning and Townships Ordinance of 1986 used in the former Transvaal and the Land Use Planning Ordinance of 1985 used in the former Cape Province
- Less Formal Township Establishment Act
- Development Facilitation Act (three provinces have provincial equivalents)

### *Land use management*

Land use management is about regulating the use of land. Currently, there are a whole host of conflicting town planning and zoning schemes in urban areas, and provinces and municipalities are introducing new, comprehensive, more flexible zoning schemes. The Land Use Management Bill is intended to be a guide to this process.

### *Tenure options*

Land tenure is the social relationship defining the rights and obligations of individuals or groups towards a piece of land. There are a number of pieces of legislation governing tenure options, e.g. Alienation of Land Act, Sectional Titles Act, Co-operatives Act, Communal Property Associations Act. Rental (leasehold) is a form of tenure existing in common law, but there is legislation intended to increase protection for the rights of tenants, e.g. the Rental Housing Act and the Gauteng Tenants and Landlords Act.

Formal tenure options include:

- Rental (from a private landlord, a municipality, an employer, a social housing institution)
- "Rent-to-buy" or instalment sale from a social housing institution (usually a company established in terms of Section 21 of the Companies Act of 1973)
- Communal ownership (Co-operative, Communal Property Association, Share Block Company established in terms of the Co-operatives Act of 1981, Communal Property Associations Act of 1996 and Share Block Control Act of 1980 respectively). In practice, however, only Co-operatives and Communal Property Associations have been commonly used for low-income people.
- Sectional Title in terms of the Sectional Title Act of 1986: Sectional Title is a combination of individual ownership of units (e.g. flats) together with communal ownership of communal property.
- Individual ownership: ownership is the right to alienate the property at will, i.e. to sell it or bequeath it to one's heirs. It is important to note that there is no such thing as unrestricted ownership, e.g. town planning schemes and building regulations place restrictions on the use of a property.

The concept of formal tenure, especially ownership, has historically played an important role in incremental urban development processes in developing countries. In John Turner's model of urban development (Turner,

1972), very low income “bridgeheader” households are seen as being mainly interested in staying close to job opportunities, low income “consolidators” are seen as being mainly interested in ownership, and middle income “status seekers” are seen as being mainly interested in good quality housing. The crucial step between “bridgeheaders” and “consolidators”, and the precondition for ongoing consolidation processes, is acquiring formal tenure. These ongoing consolidation processes, through which housing is incrementally improved by households, are also linked to “commodification”, in which there is a transformation from land and housing primarily having just a use value to property also having a market value (Ramirez et al., 1992). The granting of formal tenure is also important in this process.

The benefits of ownership are typically perceived as (WCPHD/CCT, 2003):

- To remove possibility of arbitrary eviction
- To provide households with an asset which can be used as security for credit
- To provide a foothold in the housing market through a tradeable asset
- To provide space for home based economic activities
- To foster better living conditions, a better environment and to improve personal security
- To provide the conditions for the development of communities, as residents have a sense of ownership
- To enable greater social control by authorities
- To be able to identify and charge service users
- To encourage greater household investment in housing

Ownership, however, can be inflexible, and the registration and transfer processes can be complex and expensive. Rental and communal tenure can have advantages over ownership in certain cases. Rental can be an appropriate form of tenure for the urban poor – it can often provide better locations than ownership (as new low-income properties for ownership are invariably on cheap peripheral land) and can allow for greater mobility, e.g. in search of job opportunities. Rental is often disliked by the urban poor, however, as it is perceived as being “a waste of money” compared to ownership (Clark et al., 1997). Communal tenure can be suitable for cohesive groups, as it can facilitate social networks and builds on the collective nature of informal tenure processes. The operating costs of communal tenure bodies can mean that communal tenure options are significantly more expensive than individual ownership, though, and communal tenure rights are also generally not as secure as individual ownership because the rights depend upon the soundness of the institution.

Informal tenure rights are also protected through the Constitution and legislation:

- The right of access to adequate housing in S. 26 of the Constitution; the Grootboom Case tested one aspect of this right, namely the obligation of the State to deal with emergency conditions as well as with the long-term progressive realization of the right to adequate housing.
- The Prevention of Illegal Eviction From and Unlawful Occupation of Land Act of 1998, which prescribes the procedures to be followed in evicting unlawful occupiers of land. The court needs to take the rights and needs of the elderly, children, disabled people and women-headed households into account. In addition, where the unlawful occupiers have occupied the land for more than 6 months, alternative land needs to be made available for relocation. There has been confusion over the applicability of the Act (a High Court decision saw it as also applying to tenants who have defaulted on rent). The Department of Housing is attempting to change the act.
- The Extension of Security of Tenure Act of 1997 applies in rural areas and agricultural areas within urban areas. In terms of this act, people who are occupying a piece of land with the consent of the owner or person in charge (including people who have “continuously and openly” occupied private land for 3 years) have certain tenure rights. There has also been confusion over the applicability of this act – an Eastern Cape High Court decision found that it should also apply in urban areas.

### *Land registration and transfer system*

There are essentially two land registration and transfer systems, the formal one run by the Deeds Registry and Surveyor-General's Office, and the informal system operated by community structures. In the formal system, the land surface of South Africa is surveyed into separate pieces of land which are identified by name and/or number. Each piece of land is recorded on a diagram kept in the office of a Surveyor-General, and each property is owned by someone (any property not shown as specifically belonging to someone belongs to the government). Details regarding ownership of land are kept in the Deeds Registry. In 2002, there were a total of 5 707 437 "township erven" (urban plots) and 550 404 "scheme units" (Sectional Title units) on the Deeds Registration System (GCIS, 2002).

### *Market processes*

Within the legal/institutional framework, urban property is bought and sold in the urban property market. From an institutional perspective, key factors in the analysis of property markets are (e.g. Keogh and D'Arcy, 1999):

- The institutional environment: political, social, economic and legal institutions.
- The property market itself as an institution, i.e. a network of formal and informal rules, conventions and relationships which collectively represent the system through which property is used and traded; market and non-market, formal and informal, property rights, land use and development. It should be noted that the acquisition of land is often subject to non-market processes, driven by political or community pressures.
- Property market organisations: users, investors, developers, property service providers, financial service providers, governmental bodies, NGOs, CBOs.

There are a number of laws aimed at promoting a property market in low-income areas (e.g. Home Loan and Mortgage Disclosure Act, Community Reinvestment Act).

### *Organisations*

Key roleplayers include:

- Municipalities: the main roleplayers, responsible for formulating land strategies, for delivering land and housing to the urban poor, for setting aside non-residential land and for spatial planning and land use management.
- Department of Land Affairs: responsible for land-related legislation and for tenure reform; in terms of actual delivery, its emphasis has been on rural areas. The Surveyor's General Office and the Deeds Registry, responsible for the land subdivision, registration and transfer system, are also part of the Department of Land Affairs.
- Department of Housing: responsible for formulating the policy framework for programmes to assist the urban poor in getting access to land and housing.
- Department of Provincial and Local Government: responsible for policies relating to Integrated Development Planning and spatial planning by municipalities, and for the subsidization of bulk infrastructure.
- Provincial Housing Departments: responsible for the administration of the Housing Subsidy Scheme.
- NGOs: The main roleplayers are the Urban Sector Network (USN) and its affiliates and People's Dialogue/uTshani Fund, the NGO arms of the South African Homeless People's Federation. They are involved in supporting groups of the urban poor to get access to land and housing.
- CBOs: There are many groups representing the urban poor on land and housing issues, ranging from those in conflict with the State (e.g. the Landless People's Movement) to those negotiating with the



State around access to land and housing (e.g. the Homeless People's Federation); at a more local level, residents' associations and "street committees" often play a significant role in the regulation of *de facto* tenure rights, both in informal and (some) formal settlements.

- Financial institutions: The property market depends upon access to credit, and the extent to which financial institutions do or don't provide access to credit has a major impact on access to property. The Home Loan and Mortgage Disclosure Act and Community Reinvestment Act are intended to regulate greater involvement of financial institutions in providing credit for lower-income households for purchasing properties, but the mortgage mechanism is generally regarded as inappropriate for the needs of the poor (savings-linked micro-loans from micro-finance institutions such as the Cape Town-based Kuyasa Fund are more appropriate).

### 3.B. Delivery programmes

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Significant urban land and tenure-related delivery programmes include:

- Housing Subsidy Scheme (individual ownership housing projects and institutional housing projects)
- Discount Benefit Scheme: transfer of public rental housing to tenants; municipalities are rapidly transferring public rental housing to individual ownership (and to group ownership to a small extent). In terms of national government policy, cost recoverable rents are being phased in for remaining public rental housing over a 5 year period, which will speed up the transfer process.
- Public Sector Hostels Redevelopment Programme: as part of the upgrading/redevelopment of hostels there is a process of formalizing tenure arrangements for residents, many of whom were previously unregistered, and with no formal security of tenure. Typically lease agreements are concluded and registration cards issued, and permission needs to be sought for temporary visitors to stay in hostels (USN, 2001).
- DLA's land restitution programme: In quantitative terms, land restitution has been a relatively minor delivery programme - Many urban land claims resulted in compensation rather than the allocation of land, but there have been some notable cases of urban land restitution involving well located vacant land, including District Six, Ndabeni and Tramway Road in Cape Town; Fairview and South End in Port Elizabeth; West Bank and East Bank in East London; Cato Manor in Durban; Payneville on the East Rand; and Lady Selbourne in Pretoria. Many of these projects have been slow in getting started, due to lack of development support, but Fairview in Port Elizabeth, a project of 1200 serviced sites due to be completed in 2004, is a notable example of where urban land restitution has been able to contribute to real integration and restructuring of urban areas (USG, 2003).
- DLA's municipal commonage programme: although large areas of land have been delivered in areas like the Northern Cape, the demand for municipal commonage land is decreasing, possibly because low-income residents interested in agriculture prefer to access land near towns through the DLA's LRAD programme.
- Non-residential land: apart from municipal commonages, there are no specific programmes for the provision of non-residential land – it is the municipality's responsibility to ensure that sufficient land for community facilities, commerce and industry and public open space is set aside.

Two of these programmes, the Housing Subsidy Scheme and the municipal commonages programme, are discussed in more detail below, followed by a brief discussion of the main informal delivery mechanisms.

#### *Housing Subsidy Scheme*

The Housing Subsidy Scheme is the main mechanism for providing the poor with access to urban land for residential purposes and informal economic activities. In terms of the Housing Subsidy Scheme, subsidies are provided for households with incomes of up to R3 500 p.m. to assist in acquiring housing. The housing subsidy

is used to pay for the costs of land, subdivision, transfer costs, internal infrastructure (roads, stormwater drainage, water, sanitation, streetlighting) and the dwelling unit. The various types of housing subsidy are:

- Project linked subsidy (project funding for the acquisition of land and provision of infrastructure and housing)
- Individual subsidy (to purchase a house, or to purchase a plot and build a house; now generally discontinued due to widespread abuse)
- Consolidation subsidy (for households who own serviced sites – this subsidy is for the dwelling unit only)
- Institutional subsidy (for rental or co-operative housing owned by housing institutions)
- Rural subsidy (for households with uncontested informal land rights in areas where there is no individual ownership)

The project-linked subsidy was introduced in March 1994, individual and consolidation subsidies were introduced in June 1995, institutional subsidies were introduced in December 1995, and rural subsidies were introduced in 2000.

*Table 7: Housing subsidy amounts*

Monthly joint income (Rands)	Project-linked, individual and rural subsidy (Rands)	Consolidation subsidy (Rands)	Institutional subsidy (Rands)
Indigent category	25 580	15 000	-
0-1500	23 100	12 521	23 100
1501-2500	14 200	-	23 100
2501-3500	7 800	-	23 100
3501+	-	-	-

Note that these are the normal subsidy amounts. These amounts can be increased by up to 15% of the maximum subsidy amount for difficult site conditions (e.g. steep slopes, hard rocky ground or sandy soils with high water tables).

The housing delivery programme has quantitatively been very successful – more than 1.4 million households (over 7 million people) have benefited from access to secure tenure, services and shelter since 1994.

*Table 8: Subsidised houses delivered per financial year (April-March)*

Province	1994-1997	1997/98	1998/99	1999/00	2000/01	2001/2002	2002/2003	Total
Eastern Cape	6 511	32 223	24 659	20 345	34 021	10 816	58 662	187 237
Free State	13 042	18 001	17 391	7 177	16 088	7 005	9 155	87 859
Gauteng	56 293	70 924	58 170	45 384	38 547	46 723	24 344	340 331
KwaZulu-Natal	17 553	78 468	53 105	28 997	28 547	14 379	24 485	245 534
Limpopo	11 108	15 743	22 899	12 401	20 996	16 667	14 953	114 767
Mpumalanga	19 884	10 873	16 838	4 808	16 457	14 584	21 649	105 093
Northern Cape	6 666	4 768	2 378	2 600	4 148	2 588	6 056	29 213
North West	21 287	20 977	18 367	12 944	14 109	13 885	23 784	125 353
Western Cape	25 321	43 834	34 575	26 916	17 730	16 634	20 500	185 510
Total	177 611	295 811	248 391	161 572	190 643	143 281	203 588	1 420 897

Source: Department of Housing, 2003

The three subsidy types that provide land and housing in urban areas are the project-linked subsidy, individual subsidy and institutional subsidy. These three subsidy types formed 89% of the 2.2 million housing subsidies approved between April 1994 and June 2003. Institutional subsidies, which are the only type of subsidy which allows for tenure options other than ownership, formed only 3% of subsidies approved – 97% of all subsidies were individual ownership subsidies.

*Table 9: Subsidies approved April 1994 to June 2003*

Type of subsidy	Number Approved April 1994 – June 2003	Percentage
Project-linked	1 714 554	79%
Individual	157 386	7%
Consolidation	233 344	11%
Institutional	60 314	3%
Rural subsidies	671	0%
Total	2 166 269	100%

Source: Department of Housing, 2003

Most land released for low-income households post-1994 has been as part of housing projects, but there have been examples of rapid land release (also known as managed land settlement) programmes in South Africa, in which the emphasis is on releasing serviced land, as with the Independent Development Trust (IDT) site-and-service programme of the early 1990s. The most notable example is Gauteng's Phased Housing Programme, where it was found that concentrating on releasing and servicing land, and then only initiating the programme for the consolidation of topstructures up to two years later, has a number of benefits: more people can be assisted in a shorter space of time, the use of State resources is maximized and the topstructure improvement phase can be more "sensitive to and supportive of community needs and priorities" than conventional contractor projects (Engelbrecht, 2003). Rapid land release has not been a national programme of the Department of Housing, and more recently the Department seems to be moving away from this approach towards a focus on higher quality housing projects, although at local government level rapid land release is generally favoured as the only way to ensure rapid access of as many urban poor households as possible to secure tenure and basic services (the "breadth versus width" debate).

### *Municipal commonages programme*

Municipal commonages are land owned by municipalities and able to be used by urban residents for agricultural purposes, mainly grazing. There are two types of municipal commonage:

- Traditional municipal commonage: land transferred to a municipality by the state (or sometimes by the Dutch Reformed Church) in which the condition of title specifies that the land be for the use and benefit of the public. Much of this commonage is leased to commercial white farmers, and is an important source of revenue for some municipalities in the Northern Cape, e.g. Emthanjeni Municipality typically gets 40-50% of its income from the lease of commonages (Cartwright et al., 2002). The approximate total of all the commonage in the Northern Cape is about 1 640 000 ha of land (HSRC, 2002), of which about 80% is traditional commonage.
- DLA-acquired (Act 126) commonage: land purchased post-1994 under DLA's Municipal Commonages Programme and which was transferred to municipalities with certain conditions, e.g. the municipality must ensure the use of property as commonage for the benefit of the residents, with special emphasis on the poor and less privileged (DLA guidelines specify that households earning less than R2200 per month should be given preference in access to commonages).

The municipal commonages programme has provided 31% of land transferred under all land reform programmes during 1994-2002 (78 projects, 380 819 Ha, 3407 households). Of the total area of commonage, however, 90% was in the Northern Cape. Possible reasons for the uneven spread of the commonage programme are: lack of information and knowledge about the programme, lack of local demand, and the pre-existence or lack of historical commonage use (Wegerif cited in Anderson and Pienaar, 2003).

Table 10: New commonage land (1994-2002)

Province	Ha	%
Eastern Cape	26 117	6.9
Free State	34 648	9.6
Gauteng	912	0.2
KwaZulu-Natal	0	0.0
Limpopo	0	0.0
Mpumalanga	3 626	1.0
Northern Cape	340 868	89.5
North West	7 849	2.1
Western Cape	5 844	1.5
Total	380 819	100.0

Source: DLA, 2003 cited in Anderson and Pienaar, 2003

The DLA's approach to municipal commonages is that it should ideally function as a "stepping-stone" for emergent farmers to gain experience and assets which could be used at a later date to access the LRAD grant and private land (Cartwright et al., 2002). An alternative approach would be the use of municipal commonages for a more diverse range of alternatives as a social security net, e.g. for "graveyards, provision of firewood, sanitation, grazing for draught animals and waste disposal" (Cartwright et al., 2002: 3,13).

Commonages are overwhelmingly used for grazing – there have only been a handful of attempts to use commonage land for other agricultural purposes, e.g. for poultry farming and for growing vegetables (Anderson and Pienaar, 2003). Commonages have had a positive impact on livelihoods – owning livestock can act as a buffer against loss of income from other sources. However, newly obtained municipal commonage land is often situated a considerable distance from towns and there has been a lack of management capacity at a local level (ibid).

### *Informal delivery*

Formal delivery programmes have been unable to cope with the demand, which means that many, perhaps most, urban poor households, have had to access urban land through informal routes. Informal delivery options include:

- Informal settlements: spontaneous and planned occupation of land. Informal settlements are partially a result of the transfer of traditional/ customary tenure processes to an urban setting. Many informal settlements have *de facto* security of tenure, especially those in township areas, while others are still at risk of eviction. Residents of informal settlements can have rights in terms of legislation such as the Prevention of Illegal Eviction From and Unlawful Occupation of Land Act and the Extension of Security of Tenure Act. Informal tenure plays an important role in urban development in developing countries - for new migrants to urban areas, informal tenure is sometimes the only way of getting access to some of the benefits of urban life. Moreover, for many poor households it is the only affordable option for accommodation - informal tenure can be cheap, and relatively quick and easy to access. In addition, informal settlements can often accommodate a wider variety of informal economic activities, some of which may be difficult to accommodate in formal residential areas. Social networks may also be more supportive than for more formal housing, as informal settlements accommodate the clustering of shacks to align with social networks, or the building of larger shacks for extended families. Informal settlements can form in a variety of ways, ranging from organised land "invasions" to gradual settlement of individual households. Informal settlements can vary enormously in their stability and security, ranging from settlements in constant danger of eviction to settlements where private

landowners have granted permission or settlements on public land with the tacit consent of authorities. Informal settlements should therefore not be simplistically defined as being illegal and spontaneous, but should rather be seen as being in a continuum between completely illegal and spontaneous settlements and completely legal and planned settlements. Informal settlements are often seen by residents as being a combination of “rural” or “customary” and individualised processes (WCPHD/CCT, 2003).

- Irregular subdivisions: Irregular subdivisions (where developers or communities informally subdivide and develop a piece of land, and sometimes also illegally tap into services) are one of the major ways in which people get access to land in Latin America, but seems to be fairly rare in South Africa. Examples exist, however, e.g. an investigation of Umlazi found a few examples of irregular subdivision areas with informally subdivided plots, roads, brick/block houses and illegal water connections (BESG, 1997), and some of the early Homeless People’s Federation projects resulting from land occupations, such as Kanana, could also be categorised as irregular subdivisions.
- Informal renting/ sharing: Due to lack of other options, many households’ only access to land is informal rental (or sharing) of backyard structures or rooms in houses. Backyard dwellers and sharers have very little security of tenure and are frequently evicted, especially during housing consolidation projects (where landlords extend and improve their dwellings). Studies have shown that the main reason why property owners accommodate people in backyard shacks is because of the desire to accommodate relatives; wanting to supplement income through rent is only a secondary reason, and in up to 50% of cases there is no monetary rent at all, but a reciprocal relationship in which both landlord and tenant often helped each other, e.g. by buying food (Watson et al., 1994; Yose, 1999). In general, informal rental generally takes the form of “families accommodating a small number of additional people on their properties, for rents (where these are charged) which may do little more than cover the costs of the landlord him/herself” (Watson et al., 1994: 19).

#### 4. KEY ISSUES

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This chapter identifies the key issues and gaps with regard to land issues in urban areas. Where appropriate, opportunities for possible interventions to enhance the fulfillment of the urban land needs of the poor are also identified. These interventions could take the form of enhancing understanding of certain aspects of urban land issues, changing the legal/institutional framework or supporting programmes/ initiatives.

The key issues identified are grouped in five clusters:

- Delivery programmes for providing urban land for the poor
- The needs of the poor/sustainable livelihoods
- Formal institutional framework and organisations
- Property market issues
- Informal processes

##### 4.A. Delivery programmes for providing urban land to the poor

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The main issues relating to programmes for the delivery of urban land to the poor are:

- The inadequate rate of Housing Subsidy Scheme delivery
- Narrow eligibility criteria
- Slow identification and acquisition of land for housing
- Slow land development procedures
- Insufficient funding for bulk infrastructure
- Land restitution

- Gap housing
- Impact of HIV/AIDS on supply systems
- Poor quality urban environments
- Delivery of non-residential land

### *Inadequate rate of Housing Subsidy Scheme delivery*

The Housing Subsidy Scheme is the main programme for delivering urban land to the urban poor. The scale of delivery has been an impressive achievement - over 1.4 million subsidized plots/houses have been delivered since 1994. The backlog of urban households without land and shelter has continued to increase, however. Subsidized housing delivery in the 1994-2003 period averaged 158 000 units per year, which is less than the estimated annual growth in the urban backlog (which was estimated by the Department of Housing in 1997 as 178 000 households per year). The net result has been growing informal settlements and growing numbers of inadequately housed people, especially in metropolitan areas. For example, in Cape Town the estimated number of shacks in informal settlements increased from 24 000 in 1993 to 68 000 in 1998 to 83 000 in 2003 (Abbott and Douglas, 1999; WCHC/DAG, 2003).

HIV/AIDS will, in the long-term (i.e. after about 2006/2007), result in a decrease in the new demand for urban land and housing. Given enormous existing backlogs and the current disparity between demand and supply, however, in the short to medium-term the demand for land and housing will continue to outstrip supply.

Table 11 shows how expenditure on housing has stabilized at about 1.4% of total government expenditure (the Housing White Paper gave the National Housing Goal as increasing the housing budget to 5% of the total budget). Some of the reasons for the inadequacy of the delivery rate, such as slow land development procedures, narrow eligibility criteria, insufficient bulk funding for infrastructure, are discussed below.

*Table 11: National housing expenditure*

Year	Total housing expenditure (R millions)	Total housing expenditure as percentage of total government expenditure
1997/98	4 520	2.4
1998/99	3 748	1.9
1999/00	3 494	1.6
2000/01	3 329	1.4
2001/02	3 711	1.4
2002/03	4 235	1.5
2003/04 (budgeted)	4 779	1.4
2004/05 (MTEF)	5 040	1.4
2005/06 (MTEF)	5 346	1.4

Source: National Treasury, 2001, 2002, 2003

### *Narrow eligibility criteria*

The eligibility criteria of the Housing Subsidy Scheme exclude many of the urban poor without secure tenure and adequate housing. Beneficiaries must be a lawful resident of South Africa (citizen or permanent resident); must have a partner (either be married to someone or live together with someone) or be a single person over 21 years of age with dependants; must have a monthly household income of less than R3500 per month (combined income of head of household and spouse or partner); and must not have owned property or received any form of government housing subsidy before (except for the consolidation subsidy and disabled people). Many of the urban poor living in informal settlements and backyard shacks do not meet all these criteria – young people with dependants, single people, immigrants without resident status, people evicted

from properties for non-payment of rates/service charges and people without ID books are all excluded from the Housing Subsidy Scheme.

In particular, the income threshold has not kept pace with inflation (it has stayed at R3 500 p.m. since 1994; if adjusted for inflation, it should be over R7 000 p.m. in 2003), so increasing numbers of inadequately housed people are being excluded from the subsidy scheme as the target group grows ever narrower.

The introduction of the R2479 savings contribution for contractor-built subsidised housing in April 2002 may result in increased mobilisation of beneficiary savings, but the poorest households will be disadvantaged by this requirement, and be excluded from getting access to land and housing. The impact of HIV/AIDS means that it is increasingly harder for poor households to save up this amount to be able to access a subsidy.

### *Slow identification and acquisition of land for low-income housing*

The release of adequate amounts of well-located and affordable land for low-income housing is a major blockage to delivery. Municipalities ideally need to acquire land (through purchase, expropriation and land swapping) and then “bank” the land for low-income housing well in advance of development, in order to benefit from lower costs and avoid speculation-driven price increases (which are fuelled by the setting of “urban edges”), but this is not happening. Local authorities, with some exceptions, are generally not being proactive in identifying, prioritising, acquiring and releasing well located vacant land for new low-income housing development or managed land settlement, and this has the potential to result in increasing incidences of unlawful occupation of land. Part of the reason for this has been a lack of guidance from National and Provincial Government. In addition, municipalities have only been responsible for the identification and acquisition of land for green field housing projects since the introduction of the new procurement policy for housing in April 2001, and (with a few exceptions) insufficient information exists on vacant land suitable for development. One of the major reasons for insufficient land acquisition, though, is the high cost of well located urban land, and the inadequate provision within the housing subsidy amount for the cost of land. When the housing subsidy amount was substantially increased in April 2002, there was only provision of R300 for the cost of the land in the subsidy amount. In reality, the actual cost of the land per site for a housing project can be considerably more (more than 10 times as much in some cases), especially in Cape Town, where property prices are substantially higher than in other metropolitan areas. Well-located land is especially expensive. As a result, municipalities have had to use their own funds to substantially subsidize the cost of land (and in a number of instances municipalities have subsidised the entire cost of serviced sites).

State land is particularly hard to get hold of. There is a major problem with making use of State land in urban areas for the urban poor, due to red tape associated with lack of clarity as to which sphere of government or which specific department owns or is responsible for specific pieces of State land. Only 12.6% of national and provincial state land has been “vested” i.e. determined to which particular government department it belongs (DLA Land News, 2003). The requirements for vesting are that land be surveyed, have a title deed, and that its use before 27 April 1994 be determined. One of the by-products of this problem is that local authorities are losing millions of Rands of revenue because rates are not being paid for many pieces of State land in urban areas due to the confusion over responsibility. Much well located urban land that formerly belonged to the State has also been lost through the privatization of parastatals, most notably Transnet.

Furthermore, it is important to stress that municipalities have undergone substantial institutional transformation, on an ongoing basis. The successive phases of re-demarcation and restructuring of municipal government have meant that the extent to which municipalities have been able to perform planning, land administration and land development functions have been restricted.

### *Land development procedures*

Some of the obstacles to rapid housing delivery have been complex and/or time consuming land development procedures (planning approval, subdivision, zoning/rezoning), and delays associated with the need for Environmental Impact Assessments. The problem lies not only with the procedures themselves, but with the capacity to administer the procedures. These issues are discussed in greater depth in the section on issues relating to the legal/institutional framework.

### *Insufficient funding for bulk infrastructure*

Lack of sufficient funding for bulk infrastructure is a major blockage preventing the release of land in some areas. Land in an urban context is only of real value if it is serviced (or capable of being serviced). The availability of bulk infrastructure, i.e. the main water and sewer lines and pumping stations, is therefore crucial. Local government is responsible for providing bulk infrastructure, but is able to access the Consolidated Municipal Infrastructure Programme subsidy of R3500 per unit to cover part of the costs of providing bulk infrastructure. It is widely felt that this subsidy amount is inadequate, especially for well located “brown field” sites where extensive work is required to make the site developable. The total expenditure on bulk infrastructure has increased rapidly in recent years, however.

### *Land restitution*

The land restitution process has been an important remedial programme to partially address the forced removals in urban areas in terms of the Group Areas Act. The urban land restitution process has been relatively slow (although faster than the rural land restitution process) and initially caused delays and uncertainties with low-income housing projects on sites affected by land claims, e.g. in one case in Durban a low-income housing project was frozen for 5 years by land claims (Todes et al., 2003). A number of groups of land claimants have obtained access to well-located urban land, however. In some cases, though, there is insufficient support available for the beneficiaries to develop the land, as land restitution has to some extent taken place in an unintegrated way, divorced from other urban development processes, although it has now started to be more integrated with housing delivery processes. The example of Fairview in Port Elizabeth shows how restitution projects can play an important role in integrating cities and contributing towards the restructuring of apartheid spatial patterns.

### *Gap housing*

The housing subsidy income eligibility limit of R3500 per month was introduced in 1994, and not been increased since then. At the time this limit was introduced some households with incomes of below R3500 per month were still able to obtain mortgage loans from banks, but due to the impact of inflation, an income of about R6000 per month is now typically required to be able to access a mortgage loan. As a result, there is no public sector and very little private sector delivery of land and housing for households with incomes of between R3500 and R6000 per month. There is very little information available on how these households are obtaining land and housing, but it possible that “downward raiding” (i.e. purchasing or renting of subsidy houses meant for a lower income target group) is one of the ways in which this is happening.

One possibility for ensuring greater supply of “gap housing” would be for municipalities to ensure that a proportion of all private housing/mixed use developments projects include an affordable housing component.



### *Impact of HIV/AIDS on supply systems*

There is a relatively shallow skills based of technical people involved in housing and urban land issues, and HIV/AIDS is going to have a significant impact. It is estimated that in 2010, 1.5% of professionals and technicians will die of AIDS – this will severely affect the skills base, and therefore delivery systems. Provinces and local authorities will be increasingly unable to deliver, thus resulting in declining budget allocations, and so on, in an increasingly vicious circle.

### *Poor quality urban environments*

Low-income housing delivery is usually resulting in poor quality urban environments with problems of erosion and flooding. The implementation of new housing projects is usually characterised by the bulldozing of all vegetation, which results in erosion problems. Development also usually results in increased runoff of rainwater and problems with stormwater due to the increased impermeable surface area (roads and buildings) and the disturbance of natural drainage patterns. Windblown sand resulting from loss of vegetation can make stormwater drainage more difficult, as drains get blocked with sand. There is also a notable lack of greening and vegetation in most new housing projects. Apart from the aesthetic aspect, the absence of vegetation contributes to increased stormwater problems, poor air quality (trees can help filter out air pollutants) and less user friendly open space due to there being little protection from wind and sun. In some projects there have been attempts to preserve existing vegetation, promote greening, and to deal with stormwater drainage problems through more natural means (e.g. vegetated swales).

### *Delivery of non-residential land*

Over and above land for residential purposes and for small-scale economic activity, there is also a need for land for non-residential purposes. The main issues are lack of demand for commercial/ industrial land and community facilities in low-income areas, the issue of access to communal/public land for livestock/ urban agriculture (and what role this should play in urban areas) and demand for land for cemeteries and for initiation rites.

Land is often set aside for commercial/industrial purposes or community facilities (e.g. schools) in low-income areas, but is never developed. The reasons include:

- Lack of demand from the private sector, both formal and informal (the former because of location, the latter because residential plots acquired for free can be used for business activities)
- Opposition from informal traders, e.g. to formal shopping centres
- Lack of funds by government departments for capital expenditure
- Overallocation of space and numbers of sites for community facilities, for example, the Guidelines for the Planning and Design of Human Settlements suggest a minimum of 2.4 Ha for a primary school site and 4.6 ha for a high school site. At typical thresholds of 1 primary school per 600 households and 1 high school per 1800 households, at the recommended gross residential density of 50 dwelling units per hectare, almost 33% of the area of the project would theoretically be required to be set aside as school sites. Much of this would lie vacant for many years due to lack of funds and many vacant school sites are the target for unlawful occupations by landless people.

There is a demand for access to communal/public land for livestock/ urban agriculture (in the form of municipal commonages or land leased from the municipality), but this is a contentious issue in rapidly growing metropolitan areas, cities and large towns, where the high demand for developable land may mean that space extensive activities like livestock grazing or maize farming are unviable because of high land costs. In addition, the grazing of livestock may be incompatible with dense urban environments (e.g. in Cape Town during July 2003, one person was killed and a few injured in accidents involving cows on freeways). In smaller towns, with

slower growth and fewer non-agricultural economic activities, space extensive agricultural activities can be viable and can be a safety net for the poor. The Department of Land Affairs reports a declining demand for the municipal commonages programme, though, possibly because people are preferring to use the Land Redistribution for Agricultural Development (LRAD) Programme to access agricultural land adjoining towns. Finally, it should be noted that urban agriculture can be effectively carried out on very small pieces of land. For example, a food garden of 50m<sup>2</sup> can provide 300 kg of vegetables per year (80% of a family of five's vegetable needs) while requiring an average of only 6 hours of work per week (Eberhard, 1989).

#### *Land for cemeteries*

The increased death rate due to AIDS is resulting in a dramatic increase in demand for land for burials. This is imposing an increasing burden on municipalities, who are responsible for providing and maintaining cemeteries, and are increasingly having to subsidise the cost of burial plots for the poor.

#### *Land for initiation rites*

There is a demand for land for initiation rites by groups that practice initiation rites which require initiates to spend time in secluded outdoor areas, but suitable areas are shrinking in urban areas (e.g. buffer strips between townships). There is the possibility of co-existence with environmental conservation areas, although some practices, e.g. burning of structures, are not regarded as being environmentally friendly. The harvesting of medicinal plants for traditional healing practices is also compatible with environmental conservation areas, but approaches to the management of this need to be improved.

### **4.B. Sustainable livelihoods and the needs of the poor**

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Urban land issues relating to sustainable livelihoods include:

- Location
- The nature of new projects
- Lack of co-ordination/integrated development
- Unaffordability
- The impact of HIV/AIDS
- Circulatory migration/urban-rural linkages
- Environmental degradation/environmental health risks

#### *Location of projects*

Location is the biggest single factor with regard to sustainable livelihoods. Many housing projects are located in peripheral areas away from other economic activities and major transport routes, which has a negative effect on potential income generation activities (for example, see Gear, 1999). Minimum plot sizes, e.g. 250m<sup>2</sup> in Gauteng, can also restrict access to well located land. Integrated Development Plans (IDPs) are meant to play a large role in identifying land for low-income housing, but IDPs generally have not done this as yet – new housing projects have usually been in areas where land is cheap and accessible, rather than in well located areas. Municipalities are now meant to formulate Spatial Development Frameworks and Housing Land Plans to guide future urban development and location of housing projects.

The reasons for most housing delivery being in peripheral areas include:

- Land is cheaper in peripheral areas (whereas if the land cost is too high and takes up too much of the subsidy amount it can make the project unviable).

- Large projects have certain economies of scale, while most well located pieces of land are small infill sites where only small projects can be implemented.
- Projects in peripheral areas are politically easier than infill projects, which sometimes involves resistance from surrounding residents (the NIMBY – “not in my backyard” – syndrome).
- There is no holistic life-cycle costing of locational costs: studies in Durban and Cape Town have shown that the costs of transport subsidies for low-income residents in peripheral areas are significantly more expensive in the long-term than the higher costs of well-located higher density housing would be; different government structures are responsible for subsidizing land/housing and for subsidizing transport, however, so this trade-off is not being made.
- In a context of rapid urbanization, while there are still significant vacant pieces of land within “urban edges” and scope for densification of existing areas, the scale of demand necessitates new growth in peripheral areas.

What can be considered as a “good location” is also a complex issue. Current understandings of location rely on the notion of proximity to urban facilities, services and opportunities. This understanding underpins the currently dominant spatial planning principles of integration, densification and intensification and the compact city vision. However, the meanings of “well located” are more complex and varied than this understanding allows. For example (Development Works, 1999; Royston, 2003b):

- For circulatory migrants from rural areas in South Africa, access to a secure place to live as cheaply as possible while in employment in the city.
- For foreign migrants, the nature of access may be a relatively “safe” place to hide as “illegals” within the system, opportunities for participation in the informal economy and refuge from war, drought and poverty in countries of origin.
- For informal economic operators, access may be defined in terms of convenient and viable places for a wide range of unconventional activities, supplying labour, masking operations and concealing goods from activities initiated elsewhere, either in an adjacent area or at very much greater distances.
- For people living informally as tenants or sub-tenants access may be about accommodation in formal townships.
- For people seeking relief from overcrowded conditions in formal housing, access might entail permanent urbanisation, formalisation and upgrading.
- For poorer households, access may relate to opportunities for informal subsistence economic activities in environments, which are affordable by their very informality.

Failure to take into account the diverse meanings of a good location could lead to inappropriate policy and project interventions.

### *The nature of new projects*

Apart from location, new settlements being created by low-income housing delivery are often detrimental to sustainable livelihoods in other ways as well. Some of the problems include uniform plots, inappropriate allocation processes, and low densities and thresholds. In many housing projects in small towns and peri-urban areas sufficient densities to ensure viable thresholds to support a range of activities are not being met (e.g. at least 50 dwelling units per hectare). Plot sizes in housing subsidy projects are often uniform and allocation systems are often random – they do not take the varying needs of people for land into account, e.g. some people may need larger plots on a major transport route because they want to run a *spaza* shop, others may want more space to build additional rooms to rent out, etc.

### *Lack of co-ordination/ integrated development*

One of the preconditions for being able to support sustainable livelihoods and contribute to poverty alleviation is that development should occur in an integrated, holistic way, which requires the co-ordination of different

development programmes. To a very large extent, housing projects are being carried out in isolation, however, with a focus on outputs rather than impact. Current delivery, with a few exceptions (e.g. some of the Presidential Lead Projects) is not resulting in integrated developments with a range of necessary public facilities and amenities and accompanying social and economic development programmes. The White Paper on Housing identified that housing delivery requires co-ordinated and integrated action and recommended mechanisms for co-ordinated planning and budgeting on a multi-year basis and the spatial prioritisation of public investment. Spatial Development Initiatives (SDIs) and development corridors are examples of current development initiatives that seek to harness investment through spatial prioritisation. The rural and urban development frameworks represent attempts to provide a shared development vision for co-ordinating planning and budgeting. However, these initiatives are themselves characterised by a lack of co-ordination, being driven by government departments often acting independently of each other. In the absence of a coherent framework guiding the nature and location of public investment, outcomes appear contradictory or overlapping. This problem is compounded at the local level as many local authorities, due to their limited independent financial means, identify projects for delivery in response to pre-determined national and provincial programmes and budgets. Lack of sectoral integration is evident in the plethora of national programmes that operate in isolation. This includes the housing programme. In the urban setting, the housing programme has become the *de facto* driver of development, in the absence of a coherent urban policy framework. This questions the sustainability of public investment in housing as insufficient concern is being given to enhancing social and economic opportunities at the local level; or, to borrow a phrase from the Housing White Paper - "the creation of viable communities".

#### *Unaffordability of the ongoing costs of property ownership*

Owning property carries certain obligations, e.g. the obligation to pay rates and service charges. Many beneficiaries who receive subsidized properties are unable to afford the ongoing costs of owning property, for example rates and service charges. The situation has improved greatly for ownership housing, with the introduction of rates rebates, free services and indigent policies over the past few years. Some local authorities have introduced rates rebates for properties below a certain value and most local authorities have introduced the free 6 kilolitres of water per month. The monthly costs of individual ownership can therefore be very affordable (although many people have got into arrears in the past and are still repaying the arrears). For example, in Cape Town for individual ownership of property valued at less than R50 000 and using less than 6 kilolitres of water per month, there would be no rates and the only service that would need to be paid for is the prepaid electricity. In smaller local authorities, although they have indigent policies, they cannot undertake large scale cross-subsidization of rates and service charges (although the proposed Property Rates Bill is intended to introduce a rates rebate for properties with a value of less than R15 000). In many local authorities, therefore, rates and services are still unaffordable for the majority of subsidised property owners, and this can result in people ultimately being evicted and becoming landless. Affordability is an even bigger problem for tenure options other than individual ownership, as the monthly operating and capital repayment costs can be up to 10 times higher for institutional housing than rates and services charges for comparable ownership housing (USN, 2003).

#### *Impact of HIV/AIDS*

Due to the scale of the HIV/AIDS pandemic, which is resulting in a dramatic increase in mortality rates, and the protracted nature of HIV/AIDS, it is going to be having a wide range of impacts on sustainable livelihoods issues:

- Broader macro-economic impact: HIV/AIDS will result in reduced GDP growth, thus meaning increasing poverty and unemployment.
- Changing household structure: Increasing dependency ratios due to HIV/AIDS having its greatest impact on people in economically active age groups. Greater numbers of orphans and children with

only one parent. It is estimated that by 2015 the number of orphans will have increased far beyond the carrying capacity of existing social networks.

- Changing demand patterns (e.g. more demand for institutional housing for single people with HIV/AIDS and more demand for land for urban agriculture as part of nutrition programmes).
- Costs of morbidity: HIV/AIDS imposes a bigger burden than most other illnesses because of its protracted nature. The average time from contracting the virus to the onset of AIDS is 10 years, and the average survival following an AIDS-defining condition (without anti-retroviral treatment) is 2 to 3 years. There is loss of income both for the infected person and the carer. On the other hand, one study found that for some people who had never previously had a regular source of income or any access to other opportunities, their HIV/AIDS status meant that they were now able to access government disability grants and NGO support programmes that they previously did not have access to.
- Costs of mortality: The biggest financial impact of HIV/AIDS is the costs associated with funeral ceremonies and burials. For households with strong rural links this is often even more expensive, as a stay of up to 2 weeks in the rural area may be required to carry out traditional practices. For urban households, the average cost of a burial is typically 5 times the average monthly income. Households seem to be very unprepared for these costs: only 26% of HIV positive people have a funeral policy, only 15% have insurance policies with their children as beneficiaries and only 8% have a will (Khayamandi). There has been considerable anecdotal evidence of households selling their subsidised houses to pay for burial costs. It has been found that there is also a long-term financial impact on the household long after the actual death, due to the depletion of savings, sale of assets and accumulation of debt.
- Migration: HIV/AIDS is affecting migration patterns – people with HIV/AIDS often migrate for greater privacy and to have better access to health care. For example, it has been argued that greater access to disability grants and anti-retroviral treatment in Cape Town may be encouraging migration from the Eastern Cape.
- Increasing numbers of vulnerable households: Vulnerable households, especially child-headed households, are often deprived of their properties. 5% of households affected by HIV/AIDS are child-headed households. The Homeless People's Federation has found that members of its communal property associations frequently risk falling prey to the land-owning aspirations of their relatives; communal property associations are better able to protect the rights of vulnerable members, however.

### *Circulatory migration/urban-rural linkages*

A cross-cutting issue is that of urban households which also have a rural home at which members of the extended family stay and/or which members of the urban-based component(s) of the extended family frequently visit. Surveys in South Africa have been unanimous in showing that a large proportion of urban households have strong rural links. For example, 59% of household heads in Soweto had been born outside the metropolitan area. Although more than half of migrants had lived in the urban area for more than 20 years, a majority of migrants considered that they still had a family home in a rural district and more than half of all migrants had some of their dependent children living at the rural home. One third of migrants said that they wanted to retire to their family home (Gilbert and Crankshaw, 1999). Similarly, a survey of five representative low-income areas in Durban found that 39% of households had both an urban and a rural home, and 49% of multiple-home households visited the rural home once a month (Smit, 1998).

The underlying reasons for the persistence of households with both an urban and a rural base are complex. Rural-urban migration in South Africa is occurring in a context of a labour surplus and capital-intensive industrialization and therefore does not necessarily result in rapid economic growth in urban areas nor in permanent urbanization or fundamental transformations in rural areas. These complex patterns of “circular migration” typically involve multiple rural homes and a number of urban work sites can include oscillatory

movement between urban and rural homes (Mabin, 1990). Circular migration is primarily a risk minimization strategy for poor households with few resources – income diversification in a wide range of activities can act as protection against sudden loss of income in any one activity (Evans and Pirzada, 1995).

There seem to be two broad types of poor urban households with rural links (Smit, 1998):

- Owner-only households: head of household “owns” another home. Rural homestead is a safety net and measure of last resort should the household find itself unable to survive in the urban area.
- Owner/contributor household: Regular contact and flows of people between the urban and rural home. Children are raised in the rural home and eventually go to the urban area to look for employment, while the parents may retire to the rural area after they have reached the end of their employment careers. The majority visit the rural home at least once every two months. The rural link is important not only as a safety net but also as a necessity for leading a more fulfilling life. Urban area: access to job opportunities, services and facilities; rural area: perceived better and more peaceful lifestyle, opportunity to practice agriculture.

Although the apartheid policies which reinforced circulatory migration are no longer in place, multiple home-ownership and circulatory migration are perpetuated by customary tenure in former homeland areas, urban housing shortages, high unemployment and poverty and high levels of violence (ibid). It seems, then, that having a rural base can be a safety net, but maintaining two homes can also be a burden on the poor. As an alternative, the possibility of creating new peri-urban settlements or agri-villages, where households can viably undertake small-scale agricultural activities (close to markets) and still be within reasonable commuting distance of economic opportunities and facilities, needs to be investigated.

Informants suggested that one of the main impacts of rural linkages is that often households go back to the rural area for long periods of time and return to find that someone else has occupied their house. Another impact is that of cost – the financial resources committed to the home and family members in the rural area may constrain the affordability levels of the household in the urban area, especially if the rural home is seen as the real home which family members will retire to.

#### *Environmental degradation/ environmental health risks*

Environmental degradation and environmental health risks can be a threat to sustainable livelihoods. There is a common perception that informal settlements are a major cause of environmental degradation (i.e. high use of scarce non-renewable resources, damage or destruction of key renewable resources and the generation of wastes that are not easily assimilated or broken down by natural processes), but there is very little evidence that this is actually the case. In urban areas, it is overwhelmingly the consumption patterns of higher income groups and the production and distribution systems that serve them that are responsible for most environmental degradation (Satterthwaite, 2003). The urban poor contribute very little to environmental degradation because they use so few resources and generate so few wastes. New low-income housing projects can have a significant environmental impact, however, due to large scale loss of vegetation and soil erosion. However, informal settlements do have major environmental health problems relating to lack of inadequate water and sanitation, inadequate stormwater drainage, location on unsuitable sites, etc.

#### 4.C. Formal processes and organisations

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The main legal/institutional issues, coming out of the analysis of formal processes and organizations, are:

- Lack of clear responsibility for urban land
- Unregistered property transfers
- Provincial/local government capacity

- Capacity of Deeds Registry
- Delays in planning approval
- Withdrawal of contractors/professionals from subsidised housing delivery
- Complex, rigid tenure forms
- Complex legal/institutional framework
- Gender inequities
- Private rental

### *Lack of clear responsibility for urban land*

Responsibility for urban land issues is split between the Department of Housing and Department of Land Affairs (and certain issues, such as planning and the provision of infrastructure fall under the Department of Provincial and Local Government). Although the White Paper on Land Policy (1997) acknowledges the need to address land issues in urban areas this has generally not been entrenched within the scope of implementation activities of the Department of Land Affairs. Initially, landless households were in a position to access land for settlement purposes, however, the re-defined land reform programme is driving a commercial farming agenda and does not offer redistribution resources for settlement purposes (BRCS, 2000). Urban land responsibilities sit uneasily between the DLA and Department of Housing, contributing to a lack of focussed policy attention on land for urban housing. This lack of clarity arises partly from the perception that the Department of Housing is mostly concerned with urban areas and the DLA with rural areas. Neither Department actively or programmatically championed the question of urban land identification, assembly and release or urban land regularisation, but this is starting to change, and there has started to be more collaboration between the Department of Housing and DLA on urban land issues (e.g. on strategies for funding the high cost of urban land).

### *Unregistered owners*

The fact that a growing proportion of households are not the legal owners of the properties they occupy (due to informal transfers or being underage) is a major problem. In some formal townships, conflicting records or lack of records can also make it difficult to identify owners. This results in:

- A lack of legal protection where there are disputes over tenure rights.
- The possibility of the *de facto* owner being ever able to use the property as collateral for credit is eliminated.
- The *de facto* owner will be unable to legally sell the property, which makes the possibility of selling it for a reasonable price unlikely.
- For occupants of serviced sites, not being the legal owner means that they will be unable to access consolidation subsidies for improving their housing.
- Municipalities have to carry the cost of tenure regularization, e.g. it cost the City of Johannesburg R3-4 million for the resurveying of 2000 plots in Ivory Park.
- Municipalities are unable to legally bill for rates and services because they are unable to find the legal owner.

In the past, municipalities have in some cases been able to reassign ownership of properties due to rates arrears on properties, but rates and service charge rebates for properties with a low value are becoming more common, which means this route may become more difficult in future. In addition, titles adjustment (e.g. legally transferring the ownership of a piece of land to the *de facto* owner in a case where a property has been inherited without formal transfer processes having been followed) in terms of the Titles Adjustment Act is complex and expensive, and there is a severe lack of Titles Adjustment Commissioners.

### *Capacity of provincial/local government*

There are capacity constraints among all key role players. This is simply due to the demand being overwhelmingly more than the capacity developed and resources allocated. For example, the Chief Director of Tenure Reform Implementation Systems Support has been quoted as saying that "the department is facing huge budgetary constraints that causes its performance to fall below demand" (DLA Land News, 2003).

Historically, significant administrative capacity variations in the provincial departments of housing responsible for allocating and administering subsidies to projects, have affected the extent to which provincial housing budgets have been spent. In those provinces where the least institutional capacity exists delivery has been slow. Importantly, the annual budget allocation to the various organs of state is informed by previous expenditure capacity. In turn this means that those provinces that are least able to spend their budgets are also those who will be allocated smaller resources over time.

In addition, HIV/AIDS is placing a burden on municipalities in terms of increasing numbers of households being unable to pay for rents and service charges and the cost of subsidizing funerals and cemeteries. For example, the City of Cape Town has introduced a pauper's burial service with a free burial site and standard coffin for households unable to afford the costs of a funeral.

### *Capacity of the deeds registry for tenure upgrading*

The land registration system is highly centralised, although deconcentrated (there was an attempt to decentralise responsibility for registration to municipal level with the Registration Facilitation Bill, but nothing came of this). Perhaps partially due to this centralisation, the registration system seems to have difficulty coping with the large scale upgrading of tenure required post-1994 (the Deeds Registry disagrees with this perception, but most informants agreed with the perception). Until 1986, the majority of the South African population was deprived of ownership rights; since then, steps have successfully been taken to upgrade and regularise tenure rights to individual ownership. This process, together with the granting of more than one million titles since the implementation of the housing subsidy scheme has stretched the administrative capacity of both the Surveyor General and the Deeds Office. In some cases records have not been maintained even for well-established areas, e.g. Alexandra has got four general plans overlapped on it, which makes it difficult to determine plot numbers and who owns which plot. Upgrading of tenure rights in pre-1994 townships (both Black Community Development Act areas and R293 areas) from leasehold to ownership has been slow in some provinces. There has also been slow issuing of Title Deeds in pre-1994 IDT/provincial administration site and service projects and new housing projects. This raises questions about the long term capacity of the registry to accommodate the registration and administration of rights arising from large scale tenure upgrading to ownership in the long-term, including both informal settlement upgrading and the tenure upgrading of R293 towns and BCDA areas. It should be noted, however, that the Provincial Housing Departments and the Deeds Registrars have signed a memorandum of understanding to expedite the registration of ownership in new housing projects.

The emergence of an informal property market whereby properties are sold without the transfer being registered with the Deeds Office has not only been identified as an indication of the inaccessibility of the formal system, but also as a substantial threat to the integrity of the registration system. Furthermore, informal transactions in upgraded sites adversely affect the ability of municipalities to maintain accurate billing systems for service charges and will be having an increasing impact on the financial sustainability of municipalities, as municipalities are only entitled to bill the legal owner of a property.

Furthermore, conveyancing is a closed profession, which helps make access to the Deeds Registry difficult, and property registration and transfer processes expensive and inaccessible.



### *Delays in planning approval*

Complex and time consuming land development procedures (planning approval, subdivision, rezoning), and delays associated with the need for Environmental Impact Assessments, have been a major obstacle to delivery of land and housing for the landless urban poor. Organisational capacity limitations have been identified as particularly problematic in the planning system. For example, in Gauteng, land development applications, brought to the municipal council for planning approval, took on average three to six months in 1994. Today, such applications are lodged for up to 18 months before they are rejected or approved. Similar problems are experienced with provincial Townships Board. Although created to facilitate low-income housing planning processes, the provincial DFA Tribunals have only been minimally drawn upon for such purposes. In a number of provinces, to avoid delays in the planning process, use is still made of the Less Formal Townships Establishment Act, in the name of avoiding holding costs on land and escalation costs on the price of labour and materials. Although attempts to rationalise and speed up the planning/land development process are ongoing, it remains one of the critical risk areas in the delivery of land and housing.

### *Withdrawal of contractors and professional from subsidised housing delivery*

Given the financial limitations placed on profit maximisation opportunities for private sector operators in the housing and land delivery environment associated with the capping of subsidy amounts and the new emphasis of government on the involvement of municipalities and the People's Housing Process, private sector operators such as large and medium-scale developers and contractors have left the market *en masse*. These operators have historically been equipped with sufficient financial muscle to undertake delivery of land, services and housing structures at scale, although the constraints of the subsidy amount and lack of adequate control sometimes meant that private developer projects had severe problems. Since their departure from the market and the introduction of the R 2479 own contribution requirement, delivery levels have slumped, thereby decreasing the level of supply in the face of growing demand for land and housing.

Increasingly, built environment professionals are shunning the low-income housing and land market in favour of financially more rewarding high-income residential, commercial and industrial sectors. New graduates of the built environment education sectors often opt to pursue careers in the more upwardly mobile and lucrative financial and information sectors. This attrition is translating into increased levels of staff turnover as employees move from position to position in search of more rewarding opportunities, which means that the overall professional skills pool for supporting the sector is decreasing.

### *Complex, rigid tenure forms*

Individual ownership and all the alternative forms of tenure (Co-operative, Communal Property Association, Share Block, Sectional Title) are generally complex and rigid, and do not meet the needs of the poor. Even municipalities seem to lack knowledge with regards to tenure options. The communal tenure options are especially complex and expensive, and there is a lack of institutional support for communal tenure bodies. There is a lack of flexible, incremental tenure options to accommodate staged tenure upgrading in informal settlements (as the early imposition of formal individual ownership, with its complex and expensive transfer procedures is inappropriate for the short term needs of the poor). In addition, the granting of formal ownership does not necessarily result in an increase in intra-household security of tenure. The vesting of individual ownership in one member of an extended family can disadvantage other members of the family, especially women, who are often left homeless when relationships break up.

Rental is seen as a tenure option that may be appropriate for some low-income households, but there has been a negligible amount of new low-income formal rental property delivered (and most of it has been in the form of rent-to-buy).

*Complex legal/institutional framework relating to land (physical planning, land development and land use management)*

- South Africa has made great progress in overhauling its inherited legal framework relating to physical planning, land development and land use management. South Africa's history, however, has woven a complex legal framework which has resulted in parallel systems, overlapping laws, burdensome administrative procedures and high development standards. The inherited legal and administrative system is characterised by racial discrimination, duplication of laws and administrations, unequal legal status and procedures and control-oriented laws. Much of this legacy remains, although reforms since 1994 have concentrated on trying to develop an equitable, unitary system which accommodates informal and formal development procedures and meaningful participation.
- Delayed legal transformation: The White Paper on Spatial Planning and Land Use Management and the Land Use Management Bill being driven by the Department of Land Affairs constitute the longer term legal transformation required to undo the apartheid land development legacy. In particular, this area of reform is necessary for the provision of national direction on the issue of land use management. There have been indications of shifts to a unitary, albeit provincially based, system with the enactment of provincial planning laws in some provinces.
- Uneven reform of land use management systems: While some municipalities (and whole provinces in the case of Kwa-ZuluNatal) have begun to develop and implement land use management systems that incorporate entire municipal areas, many municipalities do not have adequate tools with which to manage land use, especially in former BCDA and bantustan / homeland areas. As a result many of these areas lack the protections that land use management can offer. In some places the tendency has been to simply extend pre-existing zoning schemes to these areas, even although they may be inappropriate. Often this is on the basis of equity and of not perpetuating a dual system, apartheid-style. However, the dangers exists that control orientated land use management systems will be ignored. In the likelihood of poor enforcement, the whole exercise becomes a waste of time and energy.
- Shifts towards normative and strategic approaches: The historical route map in Appendix 2 demonstrates the prevalence of physical planning and control in the planning system. Several new laws have introduced binding principles. The DFA was a front-runner in this regard, but other laws followed suite including housing and environmental legislation. This normative shift was initially seen as a welcome break from the control orientation of the past. However, indications exist that the shift away from a "rule-book" approach towards discretion is much more difficult to implement than expected. Another important shift is away from a physical planning approach towards more strategically orientated planning, as envisaged in IDPs. Previously, the main municipal planning instruments were physical structure plans. Although IDPs are intended to contain a spatial development framework, they are much more holistic in scope, encompassing internal organisational concerns like institutional, financial and communications dimensions as well as having a more holistic external perspective.
- Multiplicity of legal requirements: Another important issue is that since 1994, a plethora of new laws have been enacted which require, amongst other things, that municipalities plan. This multiplicity of planning requirements compounds the legal complexity inherited from apartheid. These sector requirements have placed an onerous burden on municipalities to fulfil them. Initially, in municipal contexts with limited planning capacity, they competed with the IDP for the attention and dedication of officials and politicians. However, with IDPs being entrenched as the principal planning instrument for

all planning, development and management decisions in the municipality, the challenge has shifted to one of co-ordination and alignment between the different planning processes and products.

- The need for co-ordination: Municipal governance in South Africa is affected by the absence of fiscal decentralisation. Although municipalities are required to plan for development in their areas of jurisdiction, they must rely on investments from other spheres of government to resource their plans, like the municipal infrastructure and housing grants described previously. Planning in a fiscal environment in which conditional resources are stacked at the top, municipalities have an interest in ensuring that local priorities and national and provincial spending programmes are aligned. In practice, alignment is proving to be a challenge. Without it, the outcome is uncoordinated investment and un-integrated development. Furthermore, in the absence of coordination, municipalities are required to foot the operations and maintenance bill for land developments about which they may have had no role, aside from their agreement prior to township proclamation in the form of land availability and services agreements.
- The prevalence of individual ownership: Individual ownership dominates the implementation of the housing subsidy scheme, through the project-linked developer driven route – nearly 84% of the total subsidies approved to January 2002 were individual ownership project linked subsidies. The institutional subsidy is the sole subsidy vehicle for alternatives to individual ownership, but even most institutional subsidy projects have taken the form of rent to buy or instalment sale and are intended to result in individual ownership after four years (as per the regulations). There have been very few rental or communal ownership (co-operatives, CPAs) implemented, even though these tenure options can offer certain advantages.
- Strength and security of tenure rights in group ownership options: Group ownership tenure options confer personal rights on members. Being personal rights, members' interests or use rights are not enforceable against the world at large, but between immediate parties to the contract that creates that right i.e. the fellow members in the institution or shareholders. Majority decision-making binds individual members or shareholders in these options. These rights are not individually registered in the Deeds Registry, although they may be (and generally are) spatially defined. As these options rely on majority decision-making (directly or indirectly), the relative strength and security of these rights depends to a great extent on the governance and management practices of the institution, against which these rights are enforced (Development Works, 2003b). In cases where institutions are weak, or vulnerable or corrupt, the tenure rights of residents or co-owners are weak and insecure.

### *Gender inequities*

Although the housing policy itself is gender neutral, discriminatory legislation in terms of some customary law practices and marriage laws can prevent equal access to security of tenure for some women, for example, customary inheritance law. In addition, although housing subsidies are issued to both the head of household and their spouse, ownership of the property is often only registered in the name of the head of the household, which is usually the man (although it is possible to register the property in the name of both partners, and this has in fact been done in many housing projects). If the couple split up, the woman (and often the children as well) can find themselves homeless. One possible way of getting around this which has been used in some other countries (e.g. Costa Rica) is for a subsidised property to be always registered the woman partner's name.

In addition, women's position in the labour market and economy more generally, and their lesser involvement in formal employment positions, can further restrict their access to secure tenure, e.g. due to lack of access to credit. Women are also often not given the opportunity and skills to enable them to benefit from the economic opportunities which arise out of housing developments (although this is starting to change, with increasing emphasis on promoting woman builders – there is a quota of 10% for women builders in relation to involvement in housing delivery).

### *Private rental*

The Rent Control Act has been phased out, which is resulting in tenants in some buildings being forced to find other accommodation; the new Rental Housing Act to protect tenants is not yet being adequately enforced, and there are still instances of tenants being exploited by landlords in certain slum areas (e.g. the Johannesburg inner city and Muizenberg in Cape Town). There are varying views on the desirability of regulating the rental of backyard structures – on the one hand landlords sometimes exploit the tenants of backyard structures, but on the other hand greater regulation could result in backyard accommodation becoming unaffordable for the very poor.

#### 4.D. Property market issues

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One of the key objectives of South African housing policy is to ensure an effectively functioning market for low-income housing in which subsidized properties are real assets that appreciate in value. In reality, subsidized properties are informally bought and sold for a fraction of their replacement value. A study of housing subsidy projects across the country found that properties were being sold for about R3000-5000, but in some cases they have reported to be sold for up to R20 000 (USN, 2003). The extent of the market seems to vary enormously, from 0% in some projects to an estimated 10-15% of properties (400-600) being sold in less than two years in Diepsloot West (ibid). Provisional results of a research project in low-income settlements in the Blaauwberg area in Cape Town showed that about 30% of the houses in Joe Slovo Park and Du Noon have been sold, generally for R5000-R8000, since the projects were completed about 5 years ago. It appears that most of the sales are to raise money for the funeral costs of people dying from AIDS-related illnesses (an estimated 15-20 people are dying of AIDS-related illnesses every month in Joe Slovo Park, which is a settlement with approximately 1000 houses). Many sellers seem to be going back to rural areas, but some are moving to nearby informal settlements.

The formal low-income property market in urban areas is not functioning adequately for a variety of reasons:

- Apartheid urban patterns
- Emergence of a gap in the housing market
- Expensive and complex property transfer procedures
- Discontinuation of the individual housing subsidy
- Restriction on sale of subsidized properties
- Lack of access to appropriate credit
- Informal “redlining”
- Depressed formal housing market
- Lack of low-income estate agents
- Lack of perceived value
- Lack of impact by new legislation

These issues are discussed in more detail below:

- Apartheid urban patterns: South African urban areas are characterized by apartheid urban patterns, with black townships generally located in peripheral areas with a lack of facilities and with poor quality living environments. Properties in apartheid-style townships therefore have very low market values. Post-1994 housing delivery, with its emphasis on large scale projects on cheap land in peripheral areas, has tended to reinforce apartheid patterns.

- Emergence of a gap in the housing market: Linked to the above point, a significant gap has emerged between the middle/upper-income housing market and lower income housing markets. In the middle/upper income housing market (R100 000+) formal processes are rigidly applied (zoning, building regulations, property registration and transfer systems) and formal market processes are followed (estate agents, mortgage loans from banks). In the very low-income housing market (properties with a value of below about R20 000), properties are allocated through government subsidy allocation processes or informal transactions, and formal processes are only partially followed. Generally, formal processes such as zoning, building regulations, etc., are unenforced in the low-income housing sector. Ideally, there should be an integrated housing market with a range of different value properties suited to different income levels, in which it is possible to work one's way up from a cheap property to a more expensive property (or vice versa) as one's financial conditions change, but the gap between the two housing markets has become almost unbridgeable (although there is some delivery of properties in approximately the R40 000 to R75 000 range).
- Expensive and complex property transfer procedures: As a result, there is a breakdown of the formal property registration and transfer system, both in established low-income residential areas and new housing projects. Properties are exchanged for money but this is not done through a conveyancer or the Deeds Registry so the purchaser has no legal security of tenure. This is largely because of complex and expensive property transfer procedures (even though properties with a value of less than R150 000 are now exempt from transfer duty, conveyancers' fees are still beyond the reach of many). A net result of this is that a gap is opening up between the informal property market, where properties are exchanged for small sums of money, and the formal property market where purchases are funded by mortgage loans and properties are formally transferred.
- Discontinuation of individual housing subsidy: Due to corruption, the granting of individual housing subsidies for people to purchase property (e.g. existing serviced sites or existing houses) has been discontinued. This has exacerbated the inability of sellers of properties to be able to get reasonable prices for low-income properties.
- 8-year resale restriction for subsidised housing: During the first 8 years, the beneficiary of a subsidised house is restricted from selling the house – it is meant to be transferred to the Provincial Housing Department for reallocation and the beneficiary's name is removed from the subsidy database, thus enabling them to qualify for a new subsidy. In practice, this seems to be encouraging informal sales of properties, as many beneficiaries prefer money rather than a theoretical chance of one day qualifying for a housing subsidy again.
- Lack of access to appropriate credit for purchasing low-income properties: there is a great lack of appropriate and affordable housing credit. Mortgage loans are the main form of finance for buying housing in the formal housing market. Minimum mortgage loans are typically R50 000 to R100 000, which generally requires a minimum income of about R3000 – 6000 p.m., plus a stable employment record, which excludes the vast majority of housing subsidy beneficiaries. Banks have therefore not made very many housing loans for subsidised households as a result of very strict borrower eligibility criteria and the informal "redlining" of areas perceived as being high risk (i.e. deciding not to grant mortgage loans in those areas). Micro-lenders have been active in giving out micro-loans (up to about R10 000), but at very high interest rates (and sometimes using pension/provident funds as security, which puts poor people at the risk of losing their retirement funds). Even micro-loans are restricted to people in formal employment with provident funds or whose employers' have payroll deduction facilities. Prices for subsidised properties (i.e. the 0-R3500 pm income group) therefore tend to be restricted to amounts that people can raise in cash, e.g. typically less than R5000 (compared to the typical replacement value of R15 000 – R20 000 for a subsidy house and serviced site). The smaller,

more flexible micro-credit loans being granted by micro-finance institutions such as the Kuyasa Fund projects seem to be a lot more appropriate for low-income households. Borrowers are required to have a successful savings record (with a group of other savers in a savings club) before being granted a loan. Loans are typically R5000 or less and the repayment period is often less than 3 years. Repayment rates, even for pensioners and informally employed people who are not able to get access to credit elsewhere, is very good. Borrowers are able to get additional loans after repaying their first loan. The experience of micro-lenders such as the Kuyasa Fund show that even the very poor are able to save and are creditworthy, as long as the financial mechanisms are appropriate and as long as there is support for savings clubs and there are loans officers who regularly visit the borrowers.

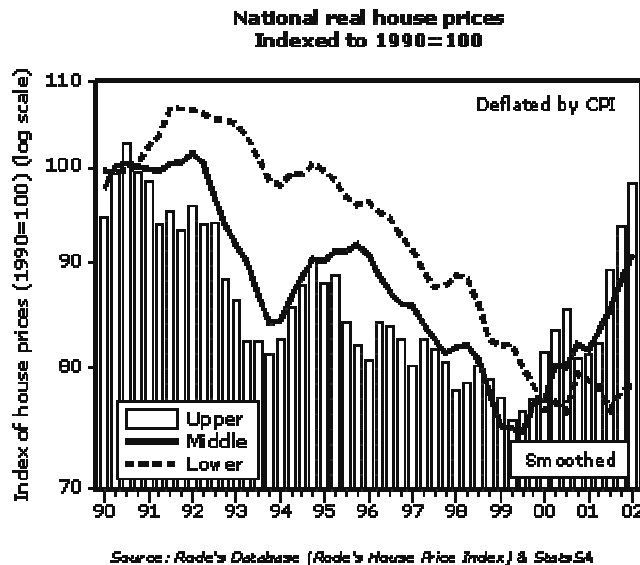
Table 12: Access to credit

Household income category	Proportion of urban households*	Housing need
Unemployed/ irregular income (0 – R1000 p.m.)	11%	Access to full housing subsidy. Unable to access formal credit. Unable to afford rates and service charges.
Formally or informally employed, regular low income (R1000 – R3500 p.m.)	31%	Access to housing subsidy. Those in formal employment can get access to micro-loans of up to R10 000 (usually pension/provident fund secured, with payroll deduction by employer).
Formally employed, lower middle income (R3500-6000 pm)	16%	No access to housing subsidy. Can get access to micro-loans, and potentially can get access to “mortgage substitute” credit, if available.
Formally employed, middle to high income (R 6000+ p.m.)	42%	Can usually get access to mortgage finance to meet their housing needs through the formal housing market.

\*Based on detailed income breakdown of population of Cape Town (WCHC/DAG, 2003); note that higher income households are generally smaller than lower income households.

Source: based on Tomlinson, 1998

- Alleged informal “redlining” by financial institutions in areas where it is difficult to foreclose on properties in the event of the borrower defaulting and where financial institutions struggle to sell properties they have repossessed. As a result, banks are reluctant to grant mortgage loans in low-income areas, which means that it can make difficult for people who would otherwise qualify for mortgage finance to get access to loans. “Redlining” by financial institutions is illegal in terms of the Home Loan and Mortgage Disclosure Act, and the Office of Disclosure set up in terms of the Act will be monitoring this.
- Depressed formal housing market: The formal residential property has been in a state of almost continuous decline (in terms of real house prices) since its peak in 1990/1991. The higher and middle income residential property market began to recover from 1999 onwards, but the “low-income” end of the market (below about R150 000 in value) has still not begun to recover. The fall of real house prices is indicative of falling property values rather than of the formal property market extending further down.



- Due to the lack of an adequately functioning property market there has not been an emergence of estate agents in most low-income areas, which means that even if someone does want to buy or sell property they find it difficult to access information about buyers or sellers.
- It is widely believed that many beneficiaries, especially of contractor-built houses in poorly located projects, do not value their properties because they have little invested in the property (either financial or sweat equity) and the end product does not meet their needs (and, can, in fact, sometimes be a burden and add to their poverty through increased transport costs, increased housing costs, etc.) (Smit, 2000). The R2479 contribution by beneficiaries for contractor-built housing was partially an attempt to ensure that beneficiaries value their properties as an asset. Some surveys have shown that many beneficiaries do recognize that their properties have a theoretical financial value, usually seen as being approximately the subsidy amount (e.g. USN, 2003).
- There is new legislation aimed at promoting a housing/land market in low-income areas (e.g. Home Loan and Mortgage Disclosure Act, Community Reinvestment Act), but this has not had any impact as yet. Although the introduction of the Community Reinvestment Act has been hailed as a means to broaden access to private lending facilities, the South African experience of bond boycotts and the near impossibility of re-possessing property mean that end-user finance institutions are particularly unaccommodating of the low-income market. In Gauteng, for example, financial institutions possess close to 20 000 properties which they are unable to dispose of, which makes them wary of extending finance to a market which cannot afford their financial products.

#### 4.E. Informal processes

Due to the inadequacy of formal processes, informal processes have developed as a response to the demand of the urban poor for land. Key issues include:

- Constitutional rights
- Upsurge in social mobilization and community organization
- Partnership between the State and organisations of the poor
- Rejection/lack of understanding of informality
- Uneven land administration

### *Constitutional rights*

Residents in informal settlements have a variety of informal rights (e.g. Grootboom case, Prevention of Illegal Eviction From and Unlawful Occupation of Land Act, etc.), although most residents are unaware of their rights, and they are difficult to enforce (e.g. even for the Grootboom community). Section 26 of the Bill of Rights in the Constitution states that “everyone has the right to have access to adequate housing” and that “no one may be evicted from their home or have their home demolished, without an order of court made after considering all the relevant circumstances”. While early interpretations of the right emphasised the concept of right of “access”, the responsibility of the state to “progressively” facilitate such access, and to prevent “arbitrary” evictions, legal precedent was established in the landmark court judgement in the Grootboom case. There have been relatively successful attempts to ensure that these rights are put into practice, for example the Grootboom case. The *Irene Grootboom & Others v. Oostenberg Municipality, Cape Metropolitan Council, Premier of the Western Cape, the Republic of South Africa and the National Housing Board* case involved the New Rust community of 1000 people, who had their shacks demolished and were evicted from the land they were staying on. Analysing the implications for social assistance, Liebenberg (2001, in Huchzermeyer, 2002) comments that “the bottom line of the *Grootboom* decision is that the state is constitutionally obliged directly to assist persons who are living in crisis situations or intolerable conditions.” This ruling obliges the State to provide land and shelter for those in crisis conditions, but has not, as yet, had much practical impact, although the national housing department is believed to be due to release a new policy on emergency housing during the course of 2003.

There are various acts protecting informal tenure rights (e.g. PIE and ESTA), but there seems to be widespread confusion over the situations in which these acts apply as a result of court interpretations at variance with the intentions of the drafters of the acts.

### *Upsurge in social mobilization and community organisation*

There has been increasing mobilization around land and tenure issues. On the one hand there have been organisations who have engaged, or attempted to engage, in negotiation with local and provincial government around access to land, for example, the South African Homeless People’s Federation and the Western Cape People’s Housing Network Forum. This approach has only been successful in isolated cases; more typical has been the experience of Ruo Emoh in Cape Town, where after 2 years of negotiation and promises, a piece of land was invaded, which was followed by immediate police action (People’s Dialogue, 1999). The procurement policy for housing introduced in 2001 defines how land may be identified for development with subsidies in a process managed by municipalities. The extent to which communities will be able to initiate and drive the process of identifying and securing land is unclear.

On the other hand, there have also been other more radical rights based groups that have taken a more confrontational approach to towards the State around land and tenure issues, for example, the Landless People’s Movement and the Western Cape Anti-Eviction Campaign. With both of these two organisations, there has been a backlash by the State, with police intervention and the arrest of leaders.

### *Partnership between the state and organisations of the poor*

The People’s Housing Process (PHP) policy is the only programme which allows for people-driven processes to obtain implement land, infrastructure and housing. However, People’s Dialogue describes how provincial and local authorities have tended to see the PHP as a “delivery route” to be *implemented* rather than as an organic social process to be *facilitated* (People’s Dialogue, 2002). In turn, this has led to an emphasis on institutional mechanisms that ensure *control* over the process of releasing housing subsidies to PHP



beneficiaries rather than on facilitation of their efforts to make best use of it. Increasingly “traditional PHP” projects driven by communities have come to be replaced by “managed PHP” projects in which the role of the community is lessened – the reasons for this are twofold: municipalities see traditional community-driven PHP processes as being too long and too uncontrolled, and PHP projects are currently excluded from the R2479 savings requirement.

### *Rejection/lack of understanding of informality*

Although policy recognizes the existence of informal settlements and there are a number of cities that are implementing or planning informal settlement upgrading programmes (most notably eThekweni Municipality in Durban), there is a general tendency to reject the permanence of informal settlements. For example, many provincial multi-year housing development plans refer to the eradication of informal settlements (Development Works, 2000a). The logic underlying these kinds of positions is that formal, programmed supply can deliver at sufficient rate and scale to deal with the backlog. A corollary of this view is that people must wait patiently until their names come up for a subsidized house. In addition, although valuable research has been undertaken on informal supply systems, informal supply systems are often ignored or rejected, instead of being built upon.

### *Uneven Land administration*

Unplanned urbanisation took place on or close to the metropolitan fringes as well as in outlying areas. Often these places are situated in former bantustan, homeland or reserve areas (in communal areas), like the displaced settlements referred to previously. Although bantustans are now historical political and administrative entities, an administrative vacuum exists in many places. This is particularly the case with land administration. With the introduction of wall-to-wall municipal government since democracy, many administration functions are the responsibility of municipalities. However, many municipalities still lack the capacity to perform them, particularly where there was not a local government administration in place previously, which is the case with former homeland areas. A lack of land administration is also evident in informally urbanised areas. Being unsanctioned, these places are not included in the formal, regulated system of governance. As a result, land administration systems, among other functions, do not reach them. Land allocation, land use management, development facilitation, property taxation and valuation, recording of land parcels and rights and dispute resolution are among the land administration functions that are not formally performed. Not enough is known about how these functions are unofficially performed in urban informal environments, although much more is known about how things work in communal areas.

## 5. CONCLUSION

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The urban land sector is a complex set of formal and informal processes and organisations that cut across a number of other sectors. As highlighted in the previous chapter, there are a vast range of issues that need to be engaged with, but the most important policy and knowledge gaps can be grouped into two clusters: policy/programme gaps and lack of knowledge of informal processes.

### *Policy/programme gaps*

Major gaps in terms of policies and programmes relating to urban land include the following:

- Municipalities need to have integrated land strategies to assess the land needs of the urban poor, to identify suitable vacant land, and to begin acquiring this land through purchase, expropriation and land swaps. Funding programmes and land development procedures need to be amended so that sufficient suitable land can be released and developed for the urban landless poor. An urban land reform

approach, including a land redistribution component, needs to be developed to contribute towards greater integration and equity in urban areas.

- The Housing Subsidy Scheme, which is the main programme for the delivery of land, infrastructure and housing to the urban poor, needs to be more integrated with other aspects of social and economic development, in order to ensure that delivery supports sustainable livelihoods and contributes to poverty alleviation; the Integrated Development Planning process is essential for ensuring this.
- There needs to be a policy on informal settlement upgrading: Informal settlement upgrading is a way to provide security of tenure to urban poor households with minimum disruption of their social and economic networks. Municipalities that want to upgrade informal settlements often have to set aside their own funds for this, as the Housing Subsidy Scheme does not allow for phased, incremental development, which is usually necessary for *in situ* upgrading.
- Existing tenure options need to be improved (for example, strengthening and securing rights in communal ownership) and alternative tenure options need to be investigated if necessary (especially an alternative to individual ownership, other than the existing social housing tenure options). In particular, there is a lack of a flexible, incremental tenure option suitable for the incremental upgrading of informal settlements (although “beneficial occupation” in terms of the Development Facilitation Act has been used in the eThekweni Municipality’s informal settlement upgrading programme and rent-to-buy has been used in the City of Johannesburg’s informal settlement upgrading programme, and variations of both of these have been proposed for the City of Cape Town’s informal settlement upgrading programme). If necessary, suitable tenure options other than individual ownership need to be developed – appropriate tenure forms in rural areas need to be investigated for potential lessons, especially with regards to less formal interim tenure options suitable for the initial stages of informal settlement upgrading.
- Strategies for facilitating the provision of affordable and appropriate rental housing need to be developed; although there have been proposals for ways of encouraging private sector rental accommodation (e.g. tax benefits), encouraging property owners need to be encouraged to upgrade backyard rental accommodation (e.g. through better access to credit) and facilitating easier access to arbitration of rental disputes (e.g. Gilbert, 2003, and Watson et al., 1994), there has in practice been neglect of private rental as a suitable option for the urban poor.
- There needs to be a strategy to deal with the enormous backlog of unregistered and conflicting tenure rights, e.g. where properties have been informally transferred or where Title Deeds have not yet been issued.
- Greater involvement of the private sector and non-profit sector in delivery programmes needs to be promoted. The State lacks sufficient capacity to be able to deliver land, infrastructure and housing for the urban poor on its own. There also needs to be sufficient space to encourage innovation and creativity, to allow the private and non-profit sectors to experiment with new approaches of meeting the needs of the urban poor, e.g. through dense, well-located, mixed-use integrated development projects that have a range of income generating opportunities and social opportunities, and through peri-urban agricultural villages where there is the potential of combining “urban” and “rural” livelihood strategies.

#### *Lack of knowledge of informal processes*

There are significant knowledge gaps with regard to informal processes, which are obstacles in formulating appropriate policies, including the following:

- There needs to be a clearer understanding of the linkages between access to land and sustainable livelihood strategies. The issues of densities and location (both at a city level and at a micro/project level), and how these impact upon livelihoods, are crucial. The role of agriculture in livelihood strategies in urban areas also needs to be explored.

- There is a need for a classification or typology of informal settlement processes which accommodates the spectrum of legality / illegality alluded to earlier, as well as the diversity of settlement types, systems and practices which the undifferentiated application of the term “informal settlement” tends to ignore.
- In particular, the category of irregular subdivision/ informal land development is not generally applied in South Africa. Although it is neither as prevalent nor as developed as the highly sophisticated system in Brazil, for example, there is sufficient evidence of its existence for greater understanding of this settlement type and its associated processes, systems and practices to be developed.
- Although it is widely accepted that subsidised houses are being transferred informally, more systematic and quantitative information is required on the scale and nature of this process. The reasons behind informal sales particularly need to be understood.
- Similarly, although some information exists on the quantitative significance of informal rental supply option (e.g. backyard shacks), it needs to be extended to achieve greater geographic coverage, in order to develop a more systematic understanding of this process and what the dynamics driving it are.
- There is a lack of information on evictions (for all housing types: formal housing, informal settlements and informal rental accommodation). Information required includes numbers of people being evicted, reasons for eviction and what happens to them subsequent to the eviction.
- Finally, more information is needed about what land administration functions are performed unofficially in informal settlements and how they are performed.

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APPENDIX 1: URBAN SOUTH AFRICA

*Metro areas/cities and large towns*

Province	Metro areas/cities	Large towns
Eastern Cape	Port Elizabeth 942 000 East London 409 000	Grahamstown 62 000 Queenstown 54 000 Uitenhage 169 000 Umtata 76 000
Free State	Bloemfontein 512 000	Bethlehem 57 000 Botshabelo 178 000 Kroonstad 86 000 Phuthaditjhaba 43 000 Sasolburg 74 000 Thaba Nchu 64 000 Virginia 63 000 Welkom 235 000
Gauteng	Johannesburg 2 521 000 Ekhureleni (East Rand) 1 709 000 Pretoria/Tshwane 1 238 000 Emfuleni (Vaal/Vereeniging) 607 000	Carletonville 165 000 Krugersdorp 204 000 Randfontein 98 000 Westonaria 114 000
KwaZulu-Natal	Durban 2 520 000 Pietermaritzburg 400 000	Ladysmith 89 000 Newcastle 259 000 Richards Bay-Empangeni 99 000 Vryheid 53 000
Limpopo	-	Phalaborwa 98 000 Polokwane (Pietersburg) 93 000 Thohoyandou 50 000* Tzaneen 101 000
Mpumalanaga	-	Ermelo 50 000 Middelburg 105 000 Nelspruit 194 000 Secunda (Highveld Ridge) 116 000 Standerton 54 000 Witbank 168 000
Northern Cape	-	Kimberley 171 000 Upington 55 000
Northwest	-	Klerksdorp 141 000 Orkney 85 000 Potchefstroom 107 000 Rustenburg 107 000
Western Cape	Cape Town 2 557 000	George 94 000 Mossel Bay 44 000 Oudtshoorn 54 000 Paarl 105 000 Stellenbosch 59 000 West Coast Peninsula (Saldanha Bay) 47 000 Worcester 77 000

\*Although the Thohoyandou TLC had a population of 263 000, only 50 000 were classified as urban

Note: Metro/city areas are classified as former TMCs/TLCs with a population of more than 400 000 as at the 1996 census. Large towns are classified as former TLCs with a population of more than 40 000 as at the 1996 census. As detailed population figures from the 2001 census are not yet available (apart from some exceptions, only raw data unadjusted for undercount is available), 1996 Census figures are used. In practice, 400 000 and 40 000 respectively were used as cut-off points, because the Municipal Demarcation Board's study of metropolitan areas and potential metropolitan areas revealed that there seemed to be a major dividing line at approximately the 400 000 people mark, and similarly for the analysis of towns in the Western Cape for the Western Provincial Housing Plan there seemed to be a natural dividing line at approximately the 40 000 people mark.

APPENDIX 2: THE FORMAL RULES OF THE GAME <sup>1</sup>

The table below indicates how the unpacking of the dimensions of urban land was approached. It applied particularly to the formal rules of the game and the organisational framework. The informal rules of the game proved more difficult to consider directly in relation to these dimensions.

	<b>Formal rules</b>	<b>Informal rules</b>	<b>Organisations</b>	<b>Programmes</b>
<b>Land Development</b>				
<b>Planning</b>				
<b>Tenur</b>				
<b>Housing</b>				

A historical route map has been employed as a device to assist with communicating the many laws that affect the urban land issue in simple, concise terms.



<sup>1</sup> The following section is a consolidation of the following sets of research reports:

- A research report undertaken by Development Works (2000) on “Regulatory guidelines for affordable shelter: South African case study- Phase one draft report: review of planning regulations, administrative procedures and standards” comprising an in depth historical perspective of changes and evolution in planning and regulatory environments pertaining to housing and land issues;
- A paper presented by Lauren Royston (1999) “The socio-political dynamics of the urbanisation process and its prospects in South Africa”; at a conference of the Research Group on Law and Urban Space (IRGLUS) titled “South to South: Urban environmental policies and politics in Brazil and South Africa”;
- A chapter authored by Lauren Royston (2002) titled “Security of Urban Tenure in South Africa: Overview of Policy and Practice” in Royston and Durand-Lasserve Eds (2002) “Holding their Ground- Secure Land Tenure for the Urban Poor in Developing Countries”, Earthscan, London;
- A chapter authored by Lauren Royston 2003a “The plan, the budget and their offspring: a big happy family? Reflections on the role of planning law in democratising access to land and housing in South Africa” in B. Alfonsin and E. Fernandes (eds) Memorias del IX Seminario Internacional “Derecho y Espacio Urbano”, IRGLUS and Urban Management Programme, Latin American and Caribbean region.
- A policy assignment undertaken by Development Works for the Decentralised Development Planning Task Team of the department of provincial and local government and GTZ titled “Proposed approach to sector alignment in the IDP process – contributions to the IDP Guide 3” (1999).

### *Provincial ordinances based on British town planning legislation*

The earliest planning laws in South Africa can be traced back to the colonial settlements in the Cape and Natal and the Boer Republics, where in 1830s – 1860s regulations were introduced to control “nuisance” and health. Land survey and deeds registration was initiated very early in South Africa’s colonial history. The first deeds registry was established in Cape Town in 1828, although registration of rights predates this. The introduction of restrictions in title deeds, became a common way of controlling the use of land and more particularly the racial ownership of land from the 1880’s. This method of determining restrictions on land became widespread and is an important element of South African planning regulation, but has since been de-emphasised with the introduction of town planning schemes. Because of its early origins and its systematic recording of all land, the system of land registration and land surveying that subsequently developed in South Africa is considered to be one of the best in the world, providing protection to holders or rights and land owners. However, this system exists in parallel with inferior land administration systems implemented over black areas rooted in the colonial and apartheid period.

In the late 1800’s there was an increase in urbanisation and many farms were subdivided in an uncoordinated way, resulting in the introduction of a number of new laws to regulate land development. The first legislation to set out a development procedure to subdivide land, was introduced in the Orange Free State in 1894. A number of new ordinances were introduced after the turn of the century and the Anglo Boer War. While based on the 1894 Orange Free State Ordinance, the Transvaal Ordinance allowed for regulations to govern the establishment and proclamation of towns and the layout and survey of erven. Through this ordinance, a “Townships Board” was established which introduced a process for hearing applications and this was later extended, by amendment, to allow participation through comments and objections. The institution of Townships Boards lives on to this day where they are still involved in approving applications made at local level.

After Union in 1910, much of the power lay at the level of the province, a situation that has only very recently come under limited transformation. The 1920s and early 1930s saw the introduction of what can be called the basis of town planning legislation in South Africa. In 1921 the Transvaal Local Government Commission recommended that town planning schemes be adopted to counter what was seen as uncontrolled urban development resulting in overcrowding and housing problems. The Provincial Subsidies and Taxation Powers Amendment Act 46 of 1925 gave the provinces power to draw up town planning legislation. By the mid 1930’s most of the provinces had their own town planning ordinance, with the Transvaal being the first and the others were modelled on it. The new Transvaal Ordinance was basically an amended version of the English Town Planning Act of 1925. It was through these ordinances that town planning schemes were introduced along with procedures for developing land or changing land uses. This is still the basis of all town planning administration, procedures and regulations today.

In white areas, progress was slow in developing town planning schemes in terms of the new ordinances, and although Johannesburg and Pretoria had made some progress with this, they were only promulgated in the mid-1940s. The schemes heralded in the cornerstone of land use regulation and control in South Africa and today all former white towns and cities have town planning schemes and many of the former African areas have “watered down” versions of these.

### *National planning legislation for African areas*

The introduction of national planning legislation for African areas left South Africa with one of the most complex regulatory frameworks in the world, characterised by duplicated and overlapping laws, complex,

control-oriented regulations. It entrenched a parallel legal and administrative systems including a spectrum of tenure rights with the lowest forms being available to Africans in rural areas and the highest forms for whites in urban areas. This entailed laws being applicable in a myriad of specific geographic areas, many of which are still applicable today. The outcome of this period encapsulates segregation of racial groups into geographical areas (and even the further delineation of sub-areas within the broad racial groups) each with its own legislation, its own forms of tenure and own administrative systems created complexity far beyond the capacity of a country like South Africa. The application of laws at different tiers of government was another characteristic of this era. National government had a firm grip on legislation governing African areas and Provinces controlling all the former white areas. This created parallel laws, procedures and administrations. It saw the introduction of the infamous Group Areas Act and it was from this time that millions of people were evicted from their homes within the urban areas. Freehold settlements were destroyed to force black residents to move to formal townships on the periphery of the “white” cities and towns. Many hundreds and thousands of black people were evicted from urban areas altogether and removed to bantustans, small areas of mainly rural land set aside for black occupation. Through the introduction of a plethora of laws, the country was balkanised along racial lines with parallel laws and administrations set up to govern separate areas of the country. The apartheid laws during this time resulted in South Africa having four “independent” states with their own planning laws, five “self-governing” territories also with their own planning legislation. The remaining white cities and towns were fragmented along racial lines into Group Areas for whites, Indians and coloureds, each with their own administrations and the urban black areas also with their own legislation and administrations applicable.

A policy on native locations and limitations on access to residential rights were firmly established by Union in 1910. The government of the day was concerned with controlling increasing instability in the towns and countryside, major immigration and unrest which was leading to industrial confrontations, rebellion and violence. The rural areas where most of the African population lived became the subject of the now infamous Land Acts. The Black Land Act of 1913 was the first legislative attempt to define areas of South Africa where Africans could own land. Areas were scheduled for exclusive African ownership, effectively restricting this to around 13% of the land area. Later Land Acts saw greater control over African areas and effectively set up quite separate administrations, resulting in parallel government and administration of these areas.

The government of the day introduced the Natives (Urban Areas) Act of 1923, for urban areas. This Act was used to segregate Africans into “locations” for their exclusive occupation rather than ownership. It also prevented the application of the provincial town planning ordinances in such areas. The 1927 Black Administration Act was promulgated to institute stronger control and management of Black areas. The 1936 Development and Trust Act gave the African ‘reserves’ more land. So-called Trust Land became an important categorisation of land as the planning and administrative procedures to apply in these areas in later years was achieved through specific regulations applicable in those areas. In the urban areas, stricter laws on slums were introduced, including the 1934 Slums Clearance Act.

The mid to late 1940s were characterised by a housing crisis, with official estimates putting the African population increase in Johannesburg at 68% between 1936 and 1946. In the period leading up to the 1948 election influx control was in ruins, confrontations were occurring over pass laws, many urban African communities were in protest, the urban African population had rocketed, employment opportunities in the cities were increasing and rural poverty was deepening.

In the first year of National Party rule, 1948, the Black Laws Amendment Act was passed that specifically excluded the application of the provincial planning ordinances in the South African Development Trust (SADT) areas. Instead, township establishment and development in the black urban areas were regulated through Proclamation R293 and tenure in the rural areas through Proclamation R188. Proclamation R293 is an important regulation as it formed the main planning legislation in black urban areas and in the former

homeland areas. A number of significant apartheid laws were passed in the 1950s that impacted on planning. In 1950 the first Group Areas legislation was passed, to be firmly cemented in 1966. In 1951 the Prevention of Illegal Squatting Act was passed and permitted the tearing down of unlawful informal settlements. Subsequent amendments in later years allowed for 'transit camps' to be established. This law was employed extensively to remove Africans from shelters they had built in areas that the authorities believed were inconvenient to existing residents or unhealthy or unsafe. Yet, the 1950s were characterised by an increase in African urbanisation and growth in residential areas, despite attempts at influx control through the introduction of the infamous pass system. At the end of the decade the Promotion of Black Self-Government Act of 1959 was enacted enabling the setting up of "independent" homelands and self-governing territories during the 1960s and 1970s. The legal and administrative basis was laid for the government to begin a major spatial restructuring of the country that took place over the next two decades.

The National States Constitution Act of 1971, permitted each of the homeland areas to proclaim their own town planning and township establishment legislation. Many of them did so, but all based the legislation on the laws that were applicable in the areas before independence or self-government. In most instances Proclamation R293 applied for town planning and township establishment in the denser areas and Proclamation R188 applied in the rural areas. Proclamation R293 was a combination of town planning regulations and administrative provisions. This was a characteristic of African legislation, which tended to include both aspects. The town planning provisions established procedures for laying out and surveying plots and handing them over to occupiers that are inferior to those practiced in the former white South Africa.

The aspect of homelands being able to promulgate their own laws also had important consequences for the legal complexity of planning laws, with homelands embarking on separate trajectories from those within white South Africa. This divergence of laws has created a legal complexity that has proven to be almost impossible to unravel in a new unitary South Africa, as altered versions of the same legislation apply in a mosaic of geographical areas across the country.

### *Physical planning legislation*

In the period preceding the coming into power of the National Party, the first attempts at national control of physical planning and economic development of South Africa were legislated with the Natural Resources Development Act of 1947, as a forerunner to the Physical Planning Act of 1967 which introduced Guide Plans, and the establishment of the National Resources Development Council.

The 1960s and 1970s were characterised by strong national and regional planning thrusts. There were two elements to this. The first was the homelands policy which essentially introduced the homelands and self-governing territories. The second pertains to national efforts to ensure systematic and centralized control by the national government of resource and economic development. In 1964 a national Department of Planning was established and the Natural Resources Development Council was variously transformed until in 1967 it became an advisory council to the Prime Minister. The Physical Planning Act was proclaimed later that year. It carried over the provisions of controlled areas previously contained in the Natural Resources Development Act. These were areas where the use of land and resources had to be co-ordinated. A significant inclusion in the Physical Planning Act from the point of view of planning, was that of Guide Plans. These were broad framework plans that co-ordinated planning and policies for land use, transportation and infrastructure for a period of up to 25 years. So the practice of forward planning through rigid blue print planning (based on the British rational comprehensive planning) became entrenched as many areas implemented Guide Plans over the next 20 years.

The town planning ordinances remained more or less intact since their promulgation in the 1930s until the Transvaal and the Orange Free State Ordinances were amended in 1965 and 1969 respectively. The

Transvaal Ordinance was superseded by the Town Planning and Townships Ordinance 15 of 1986, which still remains in place in the area of the former Transvaal. This new ordinance saw a major shift in the devolution of decision-making to municipal level through the introduction of authorised local authorities. The town planning ordinances in South Africa made provision for procedures for township establishment (new subdivisions), for the preparation of land use management schemes in the form of Town Planning Schemes and procedures for changes or amendments to Town Planning Schemes (rezoning applications).

The basic procedures for township establishment involved making an application to the local authority, submitting a range of technical documents and paying an application fee. The local authority then circulates the application, advertises it and receives comments or objections within a time period. The application is then heard by the local authority's planning tribunal or the Provincial Townships Board (where a local authority is not authorised). It is then approved or rejected, with or without conditions. After approval and if all conditions are met, the Surveyor General and Registrar of Deeds must be notified and the respective General Plan and township register opened. Properties can only be transferred to new owners once a township register is opened. No provision is made for departures from this, for example to upgrade informal settlements where communities engage in development processes in a diametrically opposite way.

### *Late Apartheid reforms*

Internal opposition to apartheid escalated in the late seventies and early eighties. It included a range of diverse community struggles as well as an increasingly coherent urban resistance strategy led by the social movements. Civic organisations were demanding a non-racial and democratic municipality based on a single tax base. Community struggles around issues of housing, evictions and urban access in the eighties were also raising national political issues such as democratic representation and the rights of the homeless and the propertied, the unrepresented, the poor and the unemployed. Faced with increasing opposition and internal contradictions, the apartheid state finally formally and officially recognised African urbanisation. It scrapped the Group Areas Act, abolished the land acts, made provisions for "less formal" township establishment and initiated mass housing schemes, in 1991. While the 1991 reforms could be seen as a minor breakthrough by introducing simplified procedures to promote African housing, they were conceptualised within a very paternalistic and dictatorial paradigm, indicating a need to retain control over African urbanisation. The introduction of capital housing subsidies and site and service schemes were further developments. However, they were really introduced as measures to encourage private sector involvement in housing than primarily addressing the real needs of the poor.

While changes to the status of land rights for Africans in urban areas were slow to materialise, incremental progress saw the extension of leasehold rights from 25-year leasehold rights to 99-year leasehold rights in 1984 and then ownership rights in 1986. The 1980s also saw attempts to promote home ownership as part of a process of establishing a black middle-class. Because the state owned most of the black housing, it became necessary to allow for freehold tenure which required compliance with land survey and deeds registration regulations and the need for mechanisms to convert lesser forms of land tenure. The government embarked on a massive campaign to survey black areas and then advertised the "Grand Sale" in 1983 followed by the introduction of the Black Communities Development Act (BCDA) in 1984 and the Conversion of Certain Rights to Leasehold Act in 1988.

In 1986 the BCDA was amended to include some significant changes in government policy. Firstly, ownership rights could be granted. Secondly, the provisions of the Land Survey Act and the Deeds Registries Act applied, putting legal requirements in white and African areas on an equal footing. A simplified form of a Town Planning Scheme was also included as a mechanism of providing some zoning controls. While some attempt was made to enable economic development on the sites. The development procedures contained in the BCDA were very similar to those already established in the provincial Ordinances. However, one very significant

difference was that the BCDA was national legislation requiring approval by the Minister. Retaining national control over African areas was a reflection of the parallel administrations responsible for white and African areas in operation in South Africa at the time, where African areas were always controlled at the national level. The BCDA was used to establish many black townships within towns in South Africa and did result in greater private sector involvement in housing development in this market. However, the legislation was repealed in 1991 when much of the racially-based legislation was removed from the statute books.

Many of the ideas and procedures from the BCDA were later introduced into amended legislation applicable to black towns that were established and governed in terms of the Black Administration Act of 1927 and the Development and Trust Act of 1936. Proclamation R.1886 was introduced in 1990 by the Department of Development Aid. The procedures outline the formal developmental stages that land would pass through before settlement occurs. While this legislation was being used, mostly by the private sector to deliver housing projects, informal settlements were burgeoning in the African township areas. This informal development process happens in reverse to the formal process and people settle on the land first and secure tenure last. There were few legal development procedures to cater for the informal processes and they remained largely outside of the law. The formal procedures for the development in African areas proved too onerous for the poor, who resorted to informal land development procedures, which provides more rapid access to land.

The 1980s were a decade of intense protest from urban Africans against the National Party government. While the legal amendments in the mid-eighties did very little to appease matters by granting land ownership rights on a similar basis as in the white areas, political rights were still withheld. During the 1980s informal settlements continued to burgeon in all township areas, causing concern for the authorities. Based on approaches overseas site and service schemes were introduced, supported largely by the less onerous development procedures in current legislation and the new legislation to be introduced in the reforms of 1991. In addition, the site and service approach was further promoted through the Independent Development Trust (IDT) capital subsidy scheme that was introduced at the turn of the decade. The IDT was granted a lump sum from government to pilot a capital subsidy scheme whereby beneficiaries obtained a site and services to the value of R7 500.00. This was the forerunner to the post transition housing subsidy scheme. By the end of 1992 the IDT announced that it had reached the end of its capital subsidy scheme and that no new projects would be implemented after March 1993.

The 1991 Land Reform White Paper was released amidst much fanfare, largely because it proposed the abolition of racially based land legislation. This meant that the Group Areas Act was to be repealed, along with the abovementioned Black Communities Development Act and many other laws. The government saw these reforms in the context of promoting "orderly urbanisation". It introduced the Less Formal Township Establishment Act, Act 113 of 1991 (LFTEA), to provide less onerous measures to develop land in formerly African areas. Essentially, the legislation was government's response to increased calls to accommodate informal housing processes and upgrade inferior and discriminatory land tenure. LFTEA effectively introduced an inferior form of tenure for areas to be developed using this legislation (Certificates of Ownership). This legislation is still in force in South Africa at present. This Act made provision for three types of developments – less formal settlement, less formal township establishment and settlement by indigenous tribes. Chapter II of the Act contained "shortened procedures for less formal township establishment". This Chapter provided for much speedier procedures, but at the expense of transparency and decentralised decision-making. Many townships were established using this procedure and its provisions are still used in some instances to this day. With permanency now recognised and racial discrimination about to fall off the statute books, upgrading inferior forms of tenure to full ownership became necessary. The Upgrading of Land Tenure Rights Act, Act 112 of 1991 was promulgated to achieve these aims. This Act categorised all rights into two schedules – Schedule 1 related to rights that were granted via complying with some survey and registration requirements (albeit, lesser forms) and applied to deeds of grant, leasehold and quitrent. Schedule 2 related to tenuous

rights granted in the form of permissions to occupy. The legislation made provision for opening township registers and introducing land use conditions in the newly-formalised townships.

The White Paper acknowledged the need for government financial assistance, especially with respect of surveying and opening township registers. It embarked on a mass survey programme, much of which was completed by the late 1990's. However, the opening of registers proved a much more difficult process and this has lagged behind the survey programme.

### *Interim reforms*

In the same year as the White Paper was released, far-reaching processes were already beginning outside of government, that resulted in the establishment of the National Housing Forum. By August 1993, some interim structures were agreed including the National Housing Board and four Regional Housing Boards which were to replace all the existing Boards, previously based on racial lines. It took another year before there was any agreement on the housing subsidy proposals. In order to break through the impasse over the disposal of state land and to speed up housing development, the Development Facilitation Bill was brought to the NHF in the later stages. The NHF was tasked with the preparation of a White Paper on Housing which later became one of the first White Papers of the new government. Of relevance are the workings of the Land and Services Working Group of the NHF. The policy positions adopted by the Working Group formed the basis of the Housing White Paper and the Development Facilitation Act. The key policy issues identified by the Working Group included developing a new planning framework, developing new mechanisms for land development and land use control, reforming land registration and tenure systems and the provision of bulk infrastructure and service standards and tariffs.

Participants in the NHF reached consensus on the principles needing to be reflected in a new approach to planning, including the need to redress the impacts of segregationist apartheid planning, the promotion of efficient and better functioning cities, the provision of a framework to mobilise investment into development and alignment with the Reconstruction and Development Programme (RDP) that the government had introduced to redress social inequalities. There was also a strong concern that any new planning system be more participative. With respect to the regulatory framework for land development, some far-reaching proposals were made in the Working Group. It called on a new regulatory framework, aspects of which later gained recognition in the Development Facilitation Act. The Working Group also tackled the thorny issue of land tenure as it related to housing and proposed that inferior and parallel systems be unified, that inferior forms be upgraded and that staged tenure be introduced through the concept of "initial ownership" which is fully upgradeable to ownership over time. Most of the land policy positions were carried over into the Housing White Paper, but more importantly into legislation, through the Development Facilitation Act and in fact, represented the kernel of the new planning paradigm that was introduced in 1995.

### *Democratic era reform and new legislation*

In April 1994, elections were held and a new democracy was heralded in. The ANC won a majority in government and the stage was set for a new era of policy development and implementation. Since the first democratic elections, a host of new national laws and policies have been enacted and developed. It is within the policies emanating from the departments of housing and of land affairs that national policy guidelines for land are to be found. Over and above these, however, the paradigmatic basis for land matters can be found in the provisions of the Constitution (Act 108 of 1996), specifically in the Bill of Rights (Chapter 2) dealing with both property and housing. Sub-sections 25 (1) and 25 (4) specifies that no law may permit arbitrary deprivation of property and property may only be expropriated for a public purpose or in the public interest and subject to compensation, which includes land reform and reforms to bring about equitable access to South Africa's natural resources. The constitution also establishes that the state must take reasonable legislative and



other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis (section 25 [5] and that a person or community whose tenure of land is legally insecure as a result of past racially discriminatory practice is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress (section 25 [6]). Subsection [9] requires that parliament has a duty to enact such legislation. Section 26 establishes that everyone has the right to have access to adequate housing (subsection [1]) and that the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right (subsection [2]) and goes on to establish that no-one may be evicted from their home without an order of court made after considering all the relevant circumstances, and that no legislation shall permit arbitrary evictions (subsection [3]).

Since 1994 key pieces of tenure legislation have been passed which are directed at securing tenure for vulnerable occupiers. These include The Restitution of Land Rights Act, the Development Facilitation Act (67 of 1995), new provincial planning laws and the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (19 of 1998). The Restitution of Land Rights Act, applicable in both rural and urban areas, addresses the restitution of land rights lost by any South African as the result of racially discriminatory laws passed since 1913. It provides three forms of redress for people who can demonstrate a right to restitution: restoration of land lost; an award of alternative state owned land, or financial compensation. The Development Facilitation Act (DFA) was seen as an interim measure to establish and test a series of changes to the system of land development and planning. Important characteristics of the law are 'fast track' procedures administered by provincial development tribunals for dealing speedily with important development projects and nationally binding principles to guide land development. Several provinces have begun to draft their own planning laws. Legal rationalisation, the management of land use and development and the determination of roles and responsibilities at the three spheres of government, are among the issues addressed in these laws. The law reform challenge arises from the numerous overlapping and contradictory laws still in place in each province. Although planning and development control laws and regulations in bantustans and urban black townships were only minimally effective, their links with land tenure and land administration make it extremely difficult to simply repeal them. The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act introduces procedures for dealing with illegal occupation of land that are 'just and equitable' and aims to ensure that eviction takes place in accordance with the law. It also outlaws the practice of individuals charging landless people a fee for the opportunity to settle on land that is not that individual's land to offer.

Urban land reform is a much less politicised issue than rural land and is treated as a technical, developmental matter of urban planning within the ambit of housing development. The following thus explores both types of legal reform introduced since 1994.

The Development Facilitation Act promulgated on 4 October 1995 shifted the planning paradigm to a normative one, based on policies and principles. It also incorporated the expression of a number of other policies of the new government, including fair and open decision-making, speedy development procedures, public participation and access to information, accountability for performance, strong policy making by local politicians. It is set to be amended but its essence will remain on. It will also remain on in new provincial planning legislation. The DFA established new ways of doing planning which are still being integrated in current approaches, for example, it was through this process that integrated development planning was conceptualised. The main objectives of the DFA are to create a new policy framework away from the control-oriented approaches of the past to an approach based on norms and standards, policies and principles (a normative planning approach, based on a right-based culture), to create a common national development procedure for all areas and to fast-track development procedures. The new planning approach was supported by the introduction of principles to guide all decision-making in relation to development and plan making. It was also supported by the introduction of Land Development Objectives (LDOs). This was the policy link where local authorities were urged to become more performance oriented and accountable for how their decisions

shape development. While the (LDOs) had a housing bias, they became the new planning instrument for local authorities to determine their vision, goals and objectives for development of their areas– which became particularly important after local government elections and the drawing up of new, integrated local government areas. Given the strong need to move towards a unitary planning system and have one procedure that could apply in every part of South Africa, it was not surprising that the DFA included a new planning procedure whose overarching goal was to cut through bureaucratic log jams to develop low income housing more efficiently.

The Minister of Land Affairs, the Department responsible for spatial planning, established and tasked a Development Planning Commission to prepare a Green Paper on Development and Planning. It achieved this objective in May 1999. The Green Paper focused on spatial planning as a sector of broader integrated development planning. It endorsed the paradigm of the DFA and supported a minimalist approach to planning. It clarified the roles of government in the new dispensation of spheres of government and co-operative governance. National government should confine itself to co-ordination, support and monitoring and establishing national norms and standards. For provinces, the ability to draft their own provincial planning laws was established. At local sphere, it supported integrated development planning and urged a strong spatial planning component. With respect to land use management, the Green Paper made some important policy statements that are intended to shape a new land management system, to be policy led and be consistent with the DFA principles and the municipally articulated priorities and strategies. The Green Paper proposals regarding the speeding up of land development included establishing a single approval route for applications that includes sector approval requirements and setting a firm time limit on decision-making, introducing a staged approval process for large applications and giving applicants and objectors a fair hearing. The Green Paper process has also given rise to the formulation of a Land Use Management Bill which encapsulates its land use management elements.

Some provinces have already prepared new Provincial legislation within this new framework and others have drafted bills. The new Provincial Acts are essentially “mini” DFAs with strong land management content to replace the current provincial Ordinances. One of the biggest challenges facing the new provincial Acts is how best to deal with the introduction of unitary systems for land management. While the new Provincial Acts wish to extend land use management systems to former black areas, the development rights conferred on land through zoning are at variance in any use zone.

As the housing process was the most advanced due to the NHF’s activities, new legislation and policy related to housing was the first to be introduced by the new government. The housing policy has evolved over time and has broadened to include a range of subsidy types. The Housing Amendment Act of 1994 formalised the National Housing Board and the four Provincial Housing Boards, introduced by the NHF’s recommendations. In October 1994 a National Housing Summit took place in Botshabelo. The approach to housing in the Housing White Paper comprised of stabilising the housing environment, institutional support, mobilising savings and housing credit, providing subsidies and facilitating the speedy release of land. The most well known of all the policies was the introduction of the housing capital subsidy scheme for low income beneficiaries. The policy is based very much on the IDT subsidy scheme, including the introduction of a once-off capital amount towards the land services and house of qualifying beneficiaries. The government developed criteria for subsidy qualification, based largely on income. The subsidy has enabled over million beneficiaries to obtain a serviced site and a modest structure, since its inception but has largely been developed within the framework of promoting more private sector involvement in low-income housing delivery. Housing projects have been developer-driven, with developers choosing land and designing projects, whose spatial location perpetuated the apartheid spatial form of the past, with housing being established long distances from economic centres. The implementation of the subsidy has emphasised ownership forms of tenure over other forms. The registration requirements are also quite burdensome and have relatively higher associated costs. In acknowledgement of the problematic aspects of the implementation results, the policy and its implementation

instruments have been continually evolving since the publication of the White Paper and the passage of the Housing Act. Officially, the process is termed “policy enhancement”. Issues currently under consideration for housing policy enhancement include beneficiary contributions to housing, the promotion of medium density housing and the people’s housing process. Emergency housing, a new approach to procurement, the widespread application of the homebuilding warranty scheme, and merging the subsidy bands are also on the agenda. The procedures for identifying land and projects has been reframed to give municipalities the responsibility for identifying land and co-ordinating the procurement process, to align with the municipal planning process, through which Integrated Development Plans are produced.

Integrated development plans (IDPs) were introduced in 1996 with the Local Government Transition (LGTA) Second Amendment Act, and specified as tools of developmental local government in 1998 with the Local Government White Paper. The 2000 Municipal Systems Act set out the method, outputs and status of the process. Chapter 5 of the Municipal Systems Act, Section 23 (1) states that “a municipality must undertake developmentally oriented planning so as to ensure that it (a) strives to achieve the objects of local government set out in ... the Constitution; (b) gives effect to its developmental duties...” Section 26 (c) of the Act goes on to specify that an integrated development plan must reflect, amongst other things, “the council’s development priorities and objectives for its elected term ...”. IDPs are the principal planning instrument for all planning, development and management decisions in the municipality. Section 35 (a) of the Municipal Systems Act provides that, once adopted by the municipality, the IDP, “is the principal strategic planning instrument which guides and informs all planning and development, and all decisions with regard to planning, management and development in the municipality”. DPLG’s guidelines on sector alignment proposed IDPs as the spine of the municipal planning process, while the sector requirements are being promoted in most cases as being incorporated into it where appropriate or undertaken in a parallel but aligned fashion. IDPs are intended to guide housing development: the general principles applicable to housing development provide that national, provincial and local spheres of government must ensure that housing development is based on integrated development planning.

There are at least five other national sector departments, besides the Department of Provincial and Local Government (responsible for the LGTA and Municipal Systems Act), whose legislation requires municipal planning to be undertaken to inform their programmes and budgets- and in turn impact on land and housing delivery (Development Works, 2001). For example, the Water Services Act requires that water services authorities prepare Water Services Development Plans (WSDPs). A WSDP should form part of an IDP. Another example is the Housing Act which requires that the municipality must, as part of IDP process, within the framework of national and provincial housing legislation and policy, prepare a local housing strategy and set housing delivery targets. Similarly, municipalities are required to include a Spatial Development Framework as part of their IDP, which includes the identification of land for development and the locally articulated parameters for establishing a municipal land use management system. Moreover, to comply with the requirements of the National Environmental Management Act and the Regulations to the Municipal Systems Act, municipalities are now required to include a Strategic Environmental Assessment in the Spatial Development Framework. Whilst the inclusion of land matters as part of the municipal plan amounts to elevating the impact of locally articulated priorities, strategies and projects on land delivery and administration, the layering of other sector planning requirements as part of the IDP also risks crowding out land matters.

In addition to the municipal requirements reported previously, the National Housing Act requires that national and provincial government prepare and maintain a multi-year national plan and multi-year provincial plans in respect of housing development. The objectives of the provincial multi-year housing development plans are to align provincial programmes with national housing policy and programmes, ensure coordinated, integrated and well-planned housing development and facilitate alignment with the Medium Term Expenditure Framework (MTEF). In turn, this is meant to assist in the development of budget projections for the allocation of funds required by the Public Finance Management Act and contribute to the National Housing Development Plan.

*Longer term legal reform*

New legal processes are also under way in respect of the taxation dispensation pertaining to land. The new dispensation is set to extend taxability throughout the territory of the country through areas previously exempt from taxation. This move is being championed by the Department of Provincial and Local Government as a means to enhance the fiscal viability of municipalities, and together with the introduction of a national spatial planning legislation, in the shape of the Land Use Management Bill (and subsequent legal developments), could substantially affect the manner in which land is held, valued and accessed. Furthermore, the Department of Provincial and Local Government has recently embarked on a policy process in respect of urban development and urbanisation, the details of which are not yet clear, but which is likely to also affect land matters in the medium to long term.

### APPENDIX 3: THE INFORMAL RULES OF THE GAME

#### *Forms of informal settlement<sup>2</sup>*

This section begins with a categorisation of informal settlement types. This categorisation is based on an international perspective of the different forms of informal settlement. Categorisation is helpful in a scoping exercise of this nature because the term “informal settlement” refers to a wide range of settlement types, systems and practices, with degrees of formality and legality. However, it should be noted at this stage that this report identifies the lack of adequate differentiation and classification of informal settlements processes in the South African context as an issue in the next section.

*Squatter settlements* can be the result of an organized ‘invasion’, or a gradual occupation. Access to squatter settlements is seldom free as an entry fee is often payable to an intermediary, or to the person or group who exerts control over the settlement, and sometimes also rent. Although the housing white paper uses the term ‘squatter’, it generally has negative connotations in South Africa, and preference is given to the use of informal settlement. ‘Informal settlement’ has become a fairly ubiquitous, but undifferentiated, term, which does not account sufficiently for the diverse nature of informal settlement processes or their physical manifestations. Furthermore, as Huchzermeyer elaborates, “‘Informal settlement’ means officially unplanned and unauthorized settlements. ... South African literature often does not draw a clear line between “informal settlement” and “informal housing”, the latter including shacks on serviced sites, in back yards of formal township houses, and on invaded land. This has led to much confusion in the interpretation of research’ (1999).

*Informal rental housing* covers a wide range of situations and levels of insecurity. Tenants and subtenants form a heterogeneous group in unauthorized land developments, squatter settlements or in dilapidated buildings in city centres. Backyard shacks (informal rental or subtenancy arrangements on sites mainly within former African townships) or overcrowding within existing township housing stock (relations of subletting and sharing), are both important forms of informal access to shelter for the poor in South Africa. A survey in 1993 in six formal black urban townships estimated that 40 per cent of the surveyed population lived in backyard shacks and that a further 15 per cent were tenants within the formal dwellings. Accordingly, a possible 55 per cent of the surveyed population were renters and sharers. Control over race zones had particular impact on the extent of backyard shacks and overcrowding within black areas vis-à-vis illegal subdivision outside of them. Furthermore, the significance of backyard shacks as a form of shelter is geographically varied according to proximity to a former homeland boundary, where access to land was much easier than in ‘white’ South Africa. It is in the towns within these areas that activity in the informal allocation of land by traditional authorities is observable. The allocation was informal because traditional leaders had no legal jurisdiction to allocate land in former homeland towns (R293 areas), but nevertheless exacted charges of various sorts in exchange for land access and other services.

The third type of informal settlement is *informal subdivision*. Various terms are used, depending on the country or author: illegal commercial land subdivision, unauthorised land development, informal land developments, *loteamentos* (Brazil), *colonias* (Mexico), etc. While references are made in South African literature and policy discourse to informal practices of ‘allocation’, the term ‘subdivision’ is seldom applied in informal contexts, being reserved for the formal and technical activity undertaken by professionals. This could be attributable to

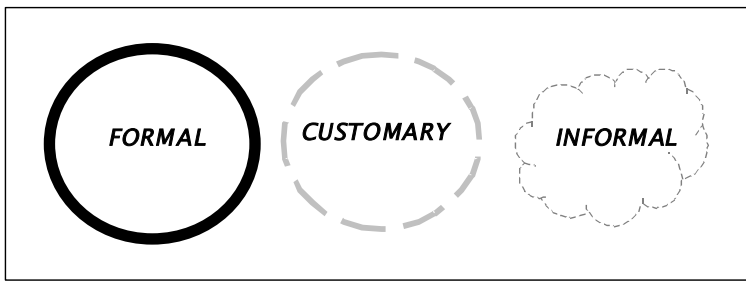
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<sup>2</sup> This sub-section draws on the urban tenure publication called “Holding their Ground: Secure Land Tenure for the Urban Poor in Developing Countries” (2002) edited by Lauren Royston and Alain Durand-Lasserve (Earthscan, London). The international perspectives rely on the introductory chapter to this book authored by Durand-Lasserve and Royston called “International trend and country contexts: from tenure regularisation to tenure security” and the South Africa perspectives rely on the introductory chapter to the South African tenure chapters, authored by Royston, called “Security of Urban Tenure in South Africa: Overview of Policy and Practice”.

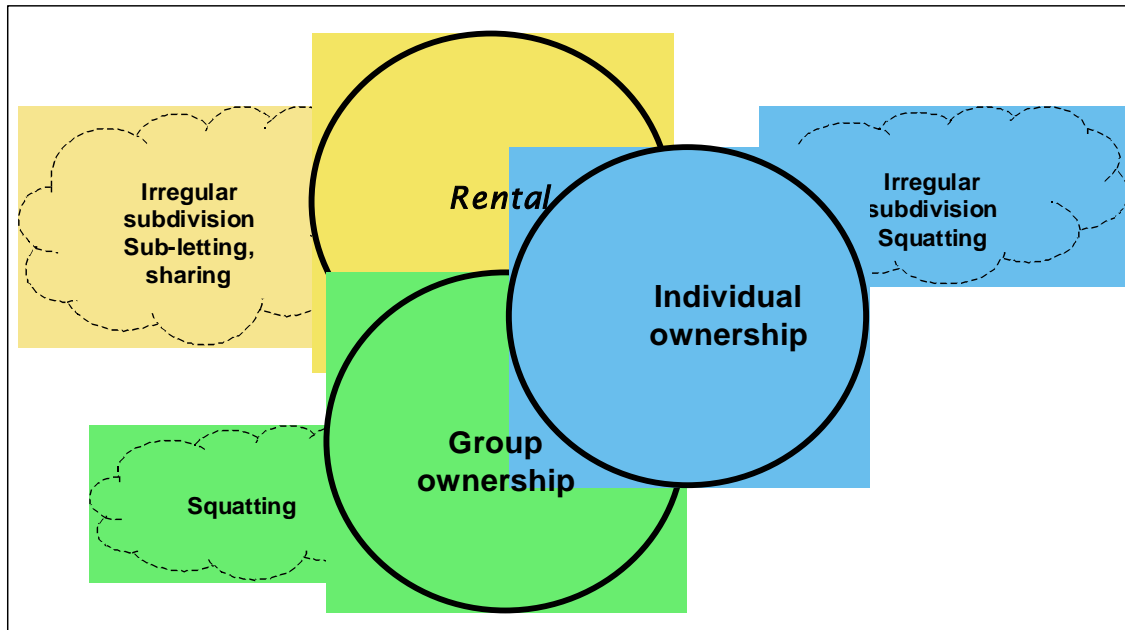
the enormous research gaps on informal settlement, observed by Huzchermeyer (1999), with informal settlement research exhibiting a bias towards invasions that took place in former white group areas. Informal allocation tends to apply especially to the loaded ‘shack lord’ term applicable to processes of land transaction characterized by violent conflict; the process of ‘shack farming’ (a form of irregular subdivision characterized by rental) and the land allocation role played by traditional authorities. These settlement processes, which are forms of irregular subdivision, are viewed in particularly pejorative terms (e.g. “illicit practices undertaken by unscrupulous individuals preying on the defenceless poor”). The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 19 of 1998 outlaws the practice of individuals transacting in land which is not theirs to begin with.

*Building bridges between the different systems*

Having introduced the diversity of informal settlements through a categorisation exercise, the report now bridges the conceptual gap between the formal and informal rules of the game. The following diagram demonstrates the concept of three different, parallel systems of land supply and management. These are formal, informal and customary or communal.



The following diagram takes the two systems relevant to this scoping study (formal and informal) and demonstrates that these systems are overlapping and inter-related. The diagram uses the example of tenure as one aspect of this inter-relationship, by indicating that the forms of informal settlement can be characterised by rental, individual ownership and group ownership tenure options.



We have identified three dimensions of the informal rules of the game to assist in describing them. These are not an exhaustive, or complete, conceptualisation of the complex and diverse factors that shape the informal rules of the game, although they are intended to demonstrate how it works. The three factors are the process of urbanisation (especially its informal aspects), strategies for organisation and mobilisation and survival strategies.<sup>3</sup> Use is made of case study references, especially in relation to the latter two factors, as the informal rules are not easily reduced to generalisable conclusions.

### *Urbanisation*

The historical process of urbanisation in South Africa was presented in the historical route map, which showed how, despite attempts to the contrary, the urban African population displayed a considerable propensity to grow and informal settlements expanded enormously in the late sixties. In the bantustans unregulated settlement growth was rapid, especially in those areas which were located close to towns and cities. Rather than increasing housing provision in urban areas, the state's strategy was to demolish urban housing. By the seventies the growth of informally settled areas was extensive. In the bantustans they far overshadowed any formal housing that the new administrations were able to deliver. Long before formal changes in policy, the cornerstones of the apartheid regime had begun to crumble with the *de facto* breakdown of influx control and unplanned urbanisation.

Unplanned, or informal, urbanisation gave rise to illegal shacks built in the backyards of formal houses within existing African townships in the 1970s, until the widespread growth of "free-standing" squatter settlements in the 1980s. The predominance of backyard shacks in the Gauteng area (formerly the Pretoria – Witwatersrand – Vaal complex) was in contrast with the Durban metropolitan region, where informal housing occurred mostly in free standing squatter settlements. The prevalence of freestanding settlements in one region and not another was related in part to the proximity of a homeland boundary to a metropolitan area. For example, the KwaZulu homeland was located ten to fifteen kilometres from the city centre. The homeland settlement closest to what is now the Gauteng province is the Winterveld settlement which in the former Bophuthatswana nearly 100 kilometres away from Johannesburg and some 30 kilometres north of Pretoria. Poor black people could access land more easily in tribal areas under apartheid than in "white" South Africa. Accordingly, the urbanising black population was "displaced" to homeland areas where the boundaries of homelands were within commuting distance of urban areas. However, people beyond commuting range of major metropolitan areas who are "recognisably rural" might also be primarily dependent on an urban wage, requiring that the notion of peripherality be extended because a large proportion of the urbanised population lives at great distances from the cities.

The "displaced" settlements are now situated in the six new provinces which inherited former homelands within their areas of jurisdiction and it is estimated that in the region of four million people inhabited such areas in 1997. In one study of such a displaced settlement – the Winterveld - it has been found that nearly one third of the former population has left since the end of apartheid, mainly the formally employed. Those that remain include poor households that have nowhere else to go and others who may depend on the relative underdevelopment of the community. Other studies have found that, contrary to expectations, displaced settlements are not inhabited by large, trapped populations. Assumptions about mobility away from apartheid's peripheral homeland and township creations appear to be questionable. Much movement had already taken place, before apartheid's demise. Reality appears to be much more complex and people's responses more varied. The search for an understanding of why people continue to stay, despite the removal of state initiated

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<sup>3</sup> The following section, which elaborates on the three factors, draws on a paper prepared and delivered by Lauren Royston in 1999 at a conference of the International Research Group on Law and Urban Space (IRGLUS) titled "South to South: Urban environmental policies and politics in Brazil and South Africa". The paper is called "The socio-political dynamics of the urbanisation process and its prospects in South Africa".

strictures, points (amongst other things) to the benefits, albeit in extremely constrained conditions, of informality.

### *Mobilisation, organisation and struggles for urban access*

Community mobilisation was an important part of the struggle for urban access, and in the process of urbanisation, in the era prior to democracy in South Africa. From about 1979, one of the most striking features of township politics was the emergence of civic organisations, frequently referred to as "community" organisations or simply "civics". The organisational efforts of the civic movement included mass actions such as the boycotts of rents and service charges, the campaigns against unelected and unmandated black local authorities and local-level negotiations between civics and the state, around the question of development. Research findings in four settlements in Greater Johannesburg and Eastern Gauteng demonstrated how civics organised communities around shared interests against attempted removal, threat of demolition or attack, as well as for survival, more land, affordable and secure housing, decent services, access to the urban economy and democratic representation. This research identifies that urban struggles have taken a variety of forms including the struggle of informal settlers against relocation; the struggles of people against eviction for not paying their rent; the struggles of backyard shack-dwellers to maintain a foothold in the urban system; the struggles for more land in overcrowded townships; and the struggle for proper democratic consultation in the drafting of new legislation.

The very nature of a "resident's" organisation is that it unites different interests within a community. Its organisational style allows for representation only of those that desire representation. In Phola Park, this was not a conflictual arrangement for as long as the organisational strategies were resistance, protection and defence orientated. Research in the Winterveld indicates that people invest in opportunities to be socially visible in order to assess what is happening when a window of opportunity is presented. For example, churches and religious associations provide a sense of security and social cohesion. In Phola Park, organisational forms other than the civic were always in operation; allegiance to traditional/tribal power bases; survival strategies of an illegal nature; networks built around the conveyance of various goods. However when these mechanisms were perceived to be under threat the conflicting interests were brought to the fore.

This view of community struggles and organisational dynamics demonstrates the importance of community cohesion in securing urban access. For example, conflict threatens over allocation and access when resources for development are introduced into communities experiencing severely constrained material circumstances. The Phola Park community was united in protecting their access to the city to survive and in defending the community against attack. However when resources for the development of the settlement were introduced, this sense of common interest became blurred. In the course of the planning process distinct groupings became apparent with different access needs. This example demonstrates how urbanisation has different meanings for people with a wide ranging diversity of urban intentions and needs, and with a variety of strategies for gaining and maintaining access.

The impact of political transition on organisation is significant as mobilisation shifted from defence (under apartheid) to development (in the negotiations and post-apartheid eras). Changes were experienced in community organisation capacity and leadership expertise as the context shifts further from defence to development to governance (as much CBO, NGO and party political leadership moved into government and the relationship between democratic representation and community consultation is worked out). The formal terrain of struggle has shifted to constituency politics and government. Communities tend to be less organised and mobilised through a single structure which can present a cohesive body of interest, as was the case in many communities organised around resistance to and defence against apartheid. Rather, different sets of interests come together in more provisional and fluid modalities of association through practices, networks and



transactions – various neighbourhoods alter their allegiance to specific groupings and specific groupings alter their policies to hold on to specific neighbourhoods.

Currently the South African Homeless People's Federation represents an important set of organised interests of the poor in the urban settlement arena. The origins of the Federation can be traced back to the period preceding the transition to democracy in South Africa in the early nineties. The Federation mobilises in informal settlements around savings and engages internationally with a network of slum-dwellers through its partners in Asia. By 1993, there were more than 50 active savings schemes in South Africa, which were organised into an informal national federation of housing savings schemes. By 1994, the number of savings schemes had reached two hundred and the federation was officially launched under the name uMfelandaWonye Wabantu BaseMjondolo, the South African Homeless People's Federation. The key objectives of the Federation in the early nineties were overcoming socio-economic and political marginalisation and access to housing. Until 1998 the strategy adopted by the Federation was broadly non- collaborationist. Non-collaboration was significant at the time as it enabled mobilisation around a sense of shared identity and belonging and the emergence of a movement of the urban poor in the form of the Federation. By early 1998, this situation began to change, with a shift in strategy towards partnerships with other agencies, in order to address needs and demands on a much larger scale and to play an even greater role in poverty eradication in the future.<sup>4</sup>

### *Survival strategies: patterns of mobility and income generation*

In addition to the important role played by organised community interests and strategies, informal strategies for survival are also important factors in shaping the informal system. Documented evidence indicates how survival strategies emerge in the context of both affordability constraints and violence. For example in Wattville, a township on the East Rand, the extended family network operated to spread income within the household. However, this survival mechanism, developed over long periods of time, was destroyed when the family was split between two places of residence. The main breadwinner was separated from one part of the household when some extended family members moved to a land invasion site, called Tamboville, and others remained behind in Wattville, the old place of residence. This affected affordability adversely in both Tamboville and Wattville.

Research in the Winterveld demonstrates how it offers a convenient place from which to ply illicit trade in rhino horn, diamonds, precious metals as well as more conventional items such as foodstuffs and electronics. Former mineworkers from Zimbabwe and Mozambique channel goods from current mineworkers to a wide range of buyers from areas of origin. The trade works in the reverse direction, making use of the network of mineworkers past and current and their areas of origin. This networking may be highly syndicated with Winterveld entrepreneurs being a fulcrum for dealings between mineworkers, buyers and workers at the Maputo port. It may also be less structured and loosely organised.

Another example is Phola Park, an informal settlement on the East Rand which was the target of repeated attempts at removal and demolitions, and the subject of repeated physical attacks and violent clashes in the early nineties. The informal nature of Phola Park served as a convenient place to live, and indeed an opportunity for participation in an informal economy. Illegal economic networks were developed between Phola Park and Mozambique based on gun running. The prospect of development brought with it the threat of legalisation, and therefore, the possibility of exposure.

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<sup>4</sup> This paragraph draws from a report by Development Works for People's Dialogue called "Cities Alliance Project on a Pro-poor Slum Upgrading Framework for South Africa: First Report", June 2003.

In addition to networks of extended family and informal income generation, exemplified in Wattville, Winterveld and Phola Park, mobility is itself a survival strategy that further demonstrates the complexity of informal urbanisation and the diverse nature of urban access. For example, research in the Durban Functional Area indicates that rural people are introduced to the city via temporary accommodation in informal settlements, while they position themselves in relation to the urban core in ways that offer affordable access to urban life. High levels of mobility represent a survival strategy for households dogged by violent conflict. Households may spread their members across space in order to maximise mobility ability.

## APPENDIX 4: ORGANISATIONS<sup>5</sup>

### *Department of Land Affairs*

In terms of the ministerial portfolio arrangements, land affairs has been assigned to the Land Affairs and Agriculture ministry. The Department has provincial and even district level presence throughout the country and includes branches specifically concerned with the management of the deeds registration, land surveying and land information systems. Surveying enables the identification of land parcels whilst titling records the rights registered in favour of or against that land (RSA, 1997). The Surveyor General's offices examine and approve all cadastral surveys and compile and maintain plans showing the relationship between land parcels. The land reform programme is mainly rural in orientation, with the exception of restitution, which covers urban areas as well.

### *National and provincial departments of housing*

Housing is a shared competency between the national and provincial spheres of government. The national Department of Housing is responsible for establishing the national policy and legal framework, developing housing programmes aligned to the policy and legal framework as well as implementation funding. The provincial sphere, on the other hand, is responsible for facilitating the implementation of housing programmes in the provinces. From 1994 to 2001, provincial governments were responsible for implementing housing policy, but since 2001 municipalities are expected to play the leading role in the identification and implementation of housing projects, even though many municipalities have severe capacity constraints. Provinces are in charge of attributing subsidies to approved projects in their respective areas of jurisdiction, and in line with provincial policy and strategic frameworks. The National Housing Act (107 of 1997) requires that national and provincial governments prepare and maintain multi-year national and provincial plans in respect of housing development. In terms of these plans, the provinces have to quantify demand and specify delivery targets.

### *Institutions set up to support the delivery of housing*

Several organisations have been established to support housing delivery. These include: The People's Housing Partnership Trust (PHPT), with a mandate to build the capacity required to generate facilitation of the concept of self-help housing development. Administrative, technical and logistical support is mostly made available to communities when they have entered into a partnership with either developers, NGO's, local authorities and other government departments, as support organisations through which projects are undertaken and managed.

The National Housing Finance Corporation, which is a development finance parastatal mandated by the National Department of Housing to mobilise and provide housing finance to retail intermediaries and housing associations operating in the low-to-moderate income market. As such, the Corporation does not lend money

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<sup>5</sup> The following section draws from three primary sources:

- A report developed by Development Works (2002b) on the "Economic Impact of HIV/AIDS on the Construction Sector and in turn on the Construction Sector" for the Department of Housing and USAID, which unpacks the range of delivery agents and role-players in the housing supply system, inclusive of its land-components;
- A report compiled by Development Works (2003a) on a "Pro-Poor Slum Upgrading Framework" for People's Dialogue and in turn Cities Alliance, which examines on a descriptive and analytical level the policy, legal and regulatory framework pertaining to land and housing delivery.
- Newsletters and websites of the South African Homeless People's Federation/ People's Dialogue/ uTshani Fund alliance, the National Land Committee (NLC)/ Landless People's Movement (LPM) and the Anti-Eviction Campaign.

directly to home buyers. Instead, the NHFC works with funding intermediaries, by providing wholesale funding.

The Social Housing Foundation, which is a national housing support institution providing capacity building and technical support services to social housing institutions, and to facilitate the development of a national policy framework for the social housing sector in South Africa.

The National Urban Reconstruction Housing Association (NURCHA) which is a not for profit organisation originally established to administer grants for development facilitation, provide guarantees for bridging finance/working capital loans and guarantees for home loans. The target of NURCHA's operations are related to the implementation of the housing policy, in particular in urban areas. To date, the work of NURCHA has focused on the provision of working capital guarantees to financial institutions or specialist agencies who provide loans for appropriate low income housing developments. NURCHA has also recently begun implementing a saving schemes programme aimed at supporting the operationalisation of the own-contributions requirements of the housing policy's implementation.

The National Homebuilders Registration Council, which was established to protect housing consumers by establishing, implementing and regulating quality standards in the home building industry. The Council has established a warranty fund and aims to provide assistance to housing consumers under circumstances where homebuilders fail to meet their obligations in terms of the Housing Consumer Protection Measures Act 1998 (Act 95 of 1998). Its brief has been extended to subsidy-funded housing.

### *Department of Provincial and Local Government*

The Department of Provincial and Local Government is responsible for formulating and implementing policy, programmes and strategies pertaining to municipalities and provincial government. Three key elements need to be emphasized in this respect. The first is that the department has developed and entrenched a system for municipal planning- Integrated Development Planning, which requires municipalities to plan and budget on an annual basis for their respective areas of jurisdiction, which includes planning for land development. The second element is the funding role which the Department performs through the Consolidated Municipal Infrastructure Programme. Third is ongoing process which the department is spearheading in respect of the formulation of an urban strategy, which may have a bearing on land issues in urban environments.

### *Municipalities*

The Housing White Paper, the Housing Act and more recently, the Procurement Policy have come to increasingly entrench the role of municipalities as key role-players in the housing and land development field. In particular, the Procurement Policy specifies that access to the funds is now conditional on the local identification of housing projects as part of the municipal planning process. This increasing emphasis on the municipal role is not limited to the housing sector and is affecting other key provincial and national functions such as water services. The municipality must, as part of IDP process, within the framework of national and provincial housing legislation and policy, prepare a local housing strategy and set housing delivery targets. The National Housing Act (107 of 1997) makes provision that municipalities must initiate, plan and co-ordinate appropriate housing, and plan and manage land use.

### *Developers and contractors*

Although during the 1990s numerous large developers dominated the low-income housing and land delivery market, today they have almost entirely left the market. The type of organisations now acting as developers include:

- Regionally active property development closed-corporations manned by an extremely small human resource pool of up to ten permanent staff members typically there are between 5 and 10 such operators per province;
- Medium size civil contractors acting as the developer such as Multi-focus, Gamont and Ubuntu, in particular in support of incremental housing processes where the delivery of serviced sites is undertaken by a developer and the construction of top-structures follows the PHP process;
- Building materials suppliers involved in housing development so as to expand their market for materials, such as Marnol in the Western Cape.
- Municipalities acting as developers by taking on the bulk of the responsibility for sourcing and appointing contractors.

### *Lending institutions*

There are two types of lending institutions that are involved in the land delivery system: bridging finance and end-user finance institutions.

Because bridging finance is extended until subsidy payments are made to the party performing the role of the developer, the manner in which the subsidy system is administered and regulated in each province has an important bearing on the cost of finance and the financial feasibility of housing and land delivery projects. Furthermore, the conditions under which different types of delivery agents secure bridging finance vary tremendously. For instance, large developers and contractors have been able to source bridging finance either internally, or from mainstream financial institutions under fairly favourable lending conditions. On the other hand, smaller role-players have had to source such support primarily from dedicated parastatal or private institutions under much higher interest-rate conditions. Bridging finance institutions range from corporate organisations to parastatals such as NURCHA and not-for-profit organisations such as the Utshani Fund.

The end-user finance component is affected by the availability, terms and conditions of financial resources on a loan, mortgage or other bases to beneficiaries. In the lower income market, accessing end-user finance has been tied to land on which a dwelling unit has been built. End-user finance institutions range from corporates such as King Finance and Southfin, to parastatals such as the Home Loan Guarantee Company, the National Housing Finance Corporation or NURCHA and not-for-profit institutions such as Utshani Fund and the Khayasa Fund. Although efforts have regularly been made to secure a greater involvement of financial institutions in the delivery of low-income housing, to date, the extent to which such facilities have been made available, has been limited. A handful of Developer/Contractor housing projects has experimented with micro-lending arrangements.

### *Professionals and technicians*

Typically, professionals and technicians include land surveyors, town planners, civil engineers and conveyancers. They operate either in government (to a limited extent), or as part of dedicated consulting firms or non-governmental housing support teams. The involvement of large consulting firms such as Africon, and Urban Dynamics in the sector is noticeably decreasing. Similarly, downsizing is a current trend affecting the sector, and increasingly, private sector professionals are operating as individual consultants. Dedicated NGOs, such as the Development Action Group (DAG), Planact or the Built Environment Support Group (BESG) have some in-house professional capacity but constitute a minority in the market.

### *Non Governmental Organisations and Community Based Organisations*

These organisations provide technical assistance, including project management, training and facilitation support to community members, as well as taking on subsidy administration functions.

In the housing sector they can take the form of Housing Support Centres, as in the Free State, dedicated housing support NGO's such as the Development Action Group (DAG), Planact, the Built Environment Support Group (BESG) or People's Dialogue, or a range of municipally linked support units. These institutions tend to be supported through donor funding. A large number of these organisations provide capacity on a project by project basis, although the People's Dialogue has a more nationally dispersed base of community networks which it supports under the aegis of the Homeless People's Federation, which has a membership in the region of 100 000 people.

The most significant community organisations involved in urban land and tenure issues are the South African Homeless People's Federation, the Landless People's Movement and the Western Cape Anti-Eviction Campaign.

The origins of the Homeless People's Federation date back to March 1991, when Catholic Welfare and Development (CWD) organized a conference of 150 informal settlement leaders plus Asian NGOs and CBOs at Broederstroom called "A People's Dialogue on Land and Shelter". About 50 of the informal settlement leaders pledged to strengthen ties between their communities and went on exchange visits to the SPARC/NSDF/Mahila Milan alliance in India in 1991 and 1992. In 1992 People's Dialogue was established as a NGO and began establishing Housing Savings Schemes. In 1994 these savings schemes were formalized into the South African Homeless People's Federation. The membership of the Federation largely consists of poor women living in informal settlements, backyard shacks and hostels. The uTshani Fund, a bridging finance and end-use finance institution, was formed in 1995/6. In 2000/2001 the Alliance began to experience problems arising from "bureaucratic deadlock, financial difficulties and alienation of leadership from the base", but went through a period of reflection and restructuring and has reinvented itself. The Homeless People's Federation/People's Dialogue/uTshani Fund alliance has attempted to work with the State: "A crucial and controversial feature of the Federation's strategies has been the practice of politics without parties. Unlike Sanco, for example, the Federation does not believe in delivering the poor as a vote-bank to any political party. Unlike the rights-based, confrontational (and often externally driven) social movements of recent years, such as Landless People's Movement, Anti-Eviction Campaigns and Crisis Committees, the Federation is rooted in a strategy of accommodation, negotiation and long-term pressure" (Alliance Newsletter, 2003).

The Landless People's Movement was formed in July 2001 by leaders of various landless people's structures from across South Africa. It was supported by the National Land Committee. It mainly represents rural landless (farm workers, labour tenants, restitution claimants, redistribution applicants, the rural poor living in the former homelands) but, in Gauteng particularly it also represented the urban poor living in informal settlements. The Landless People's Charter was adopted by more than 3000 landless delegates from communities across South Africa and their landless allies from around the world at the Landless People's Assembly held in Durban on 30 August, 2001 at the 3rd United Nations World Conference Against Racism. The LPM's motto is "Land Now! Organise and Unite!". The Landless People's Charter says the government must expropriate the land of absentee landlords, abusive farmers, indebted farmers, all unused and under-utilised land and all unproductive land. It has taken a confrontational approach to the State. Most of its activities have focused on landlessness in rural areas, with the exception of a campaign to resist the forced removal of a number of informal settlements in Gauteng: "From Thembelihle to Freedom Park, from Velaphi to Orange Farm, from Mandelaville (Durban Deep) to Lawley, from Protea South to Katlehong to dozens of other informal settlements surrounding Joburg, the City of Joburg and other structures of the government are waging war against the poor and landless. The police and the infamous "Red Ants" (Wozani Security) are deployed as the footsoldiers of the government in a war which aims to force hundreds of thousands of poor people out of their homes to distant open velds where many will die from exposure to the winter environment. These actions are undertaken completely outside of the law, in the absence of any proper consultation or procedures, and with total disregard of the basic human rights of the poor residents of informal Joburg" (LPM, 2002)

The Western Cape Anti-Eviction Campaign (AEC) was formed in Cape Town in November 2000 with the aim of “fighting evictions, water cut-offs, poor health services, for free electricity and against police brutality”. The AEC is currently an umbrella body for over 15 community organizations, crisis committees, and concerned residents movements who have come together to organise and demand their rights to basic services.

The AEC is fighting evictions and water and electricity cut-offs on many different levels. Its current activities range from direct action demonstrations against evictions and cut-offs, to legal actions that challenge the constitutionality of evictions, to mass mobilisation and popular education initiatives, to creative organisation and capacity building programs. The Anti-Eviction Campaign has been in fierce conflict with the State, and has had numerous members arrested.

## APPENDIX 5: THE INTERFACE OF HIV/AIDS AND URBAN LAND ISSUES

This section provides an overview of key issues arising from a consideration of the interface between thematic impacts of HIV/AIDS and land. The thematic impacts considered here are not exhaustive but focus on critical dimensions that should be taken into account when planning policy and programme interventions. They include:

- HIV/AIDS macro-demographic and macro-economic impacts on the demand for land;
- Implications of HIV/AIDS morbidity and mortality on spatial planning and land use;
- HIV/AIDS livelihood impacts on individuals, household, communities, (in terms of economic and social dimensions) and in turn on land;
- HIV/AIDS impacts on the supply systems for land.

Each of these thematic impacts is unpacked in terms of how it interfaces with intrinsic vulnerabilities of the theme explored and/or generating new vulnerabilities. This is then used to articulate specific issues, in the form of findings as well as questions (where the information gathered does not provide conclusive direction).

### HIV/AIDS macro-demographic impacts on the demand for land

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In South Africa there is no certainty about the spread of the epidemic. No representative data is available on AIDS cases and AIDS deaths. The HIV epidemic in South Africa is likely to remain hidden for a long time, both in statistics and the public eye, as the full force of the AIDS epidemic, which lags behind the HIV epidemic, has yet to be experienced (ABT, 2002). However, HIV infection is concentrated in people of working age, and the scale and nature of the epidemic in South Africa make it a significant factor to consider in policy and strategy for delivery in all sectors.

#### *Impacts of HIV/AIDS on the total population*

The South African epidemic is at a relatively early stage in South Africa compared to other African countries. Infection rates among women frequenting ante-natal clinics are used as a proxy for estimating national and provincial prevalence. In the results of the antenatal survey published in March 2001 (Kaiser Daily Health News in Centre For the Study of AIDS, 2002), point prevalence rates for HIV infection in the nine provinces for the year 2000 were estimated as highest in KwaZulu-Natal (KZN) 36.2%, Mpumalanga (MP) 29.7%, Gauteng (GP) 29.4% and Free State (FS) 27.9%, and lowest in North West (NW) 22.9%, Eastern Cape (EC) 20.2%, Northern Province (NP) 13.2%, Northern Cape (NC) 11.2% and Western Cape (WC) 8.7% (Ibid.) . The disparities in the provincial infection rates are narrowing. There are also strong indications that HIV impacts on specific communities within any region can differ markedly. Where prevalence in rural areas is relatively low, it may often indicate a delay in development of their epidemics, rather than a fundamentally different risk profile from urban areas. In 2001, the national average was estimated at 24.5% (Centre for the Study of AIDS, 2002). 4.7 million South Africans are estimated to be living with HIV up from 4.2 million at the end of 2000. Difference between projected total population in 2000 and 2010, according to different actuarial models exist. Whilst there are variations in the projected total population across the models, in the overwhelming majority, they still identify that the total population will continue to increase at least until 2010. Figure 1, below, provide and overview of the projected population up to 2015, by differentiating between a no AIDS scenario, in yellow, a change scenario (i.e. where behavioural and treatment interventions are made), in pink, and a no change scenario, in blue. These projections have been compiled by making use of the recently re-calibrated ASSA model, the ASSA 2000 model.



Figure 1: Total Population in South Africa (ASSA, undated)

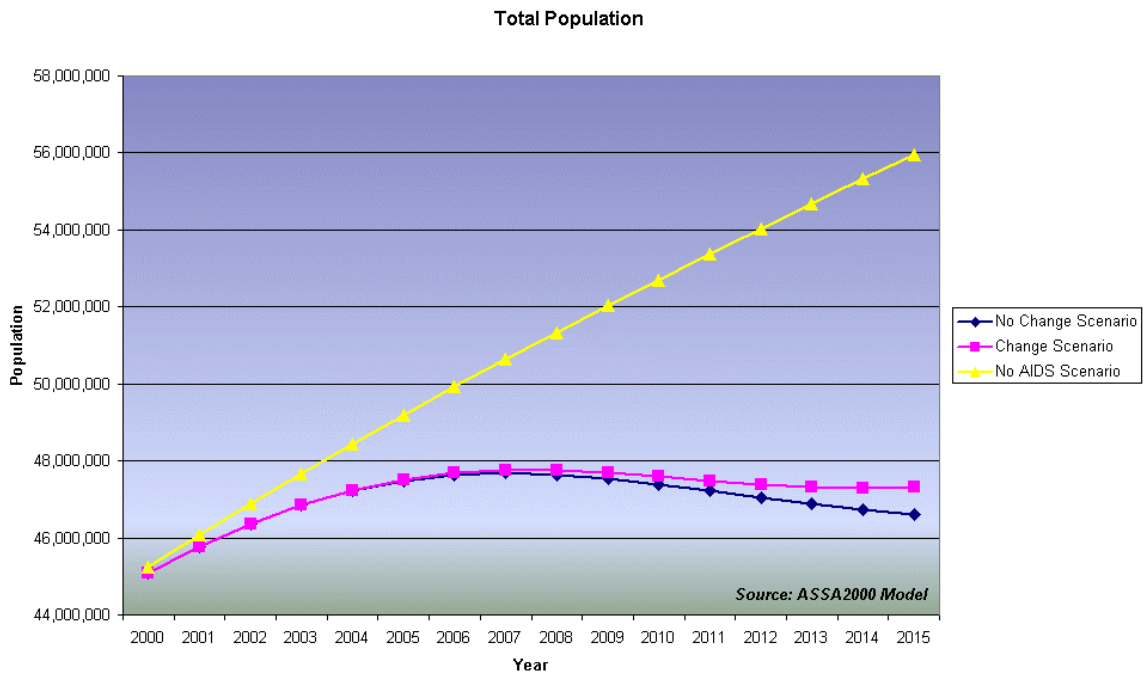


Figure 1 reveals a substantial gap in total population figures between the AIDS scenario and the scenario without AIDS. Importantly, it is worth stressing that the difference, in terms of total population numbers between the Change and No Change scenarios, is minimal in the short term but accentuates from 2010 onwards. The question that these projections raise is: how does a substantial drop in projected total population figures impact on the overall demand for land in the country?

#### *Marginal demographic impacts of HIV/AIDS on total demand in a context of widespread landlessness*

Oxfam co-ordinator Dan Mullins (quoted in the Business Day 30 May 2002) has stated a percentile range for HIV positive potential land reform beneficiaries of between 15% and 35%. Research has been undertaken to consider how macro-level demographic impacts will impact on housing demand for households earning less than R 6000 and R 3500 per month (Khayamandi, 2002).

The prevalence of HIV is expected to result in a drop in housing demand in general. The demand would still increase until 2006/2007, but at a slightly lesser rate than when HIV is not prevalent. It would then decrease slightly until 2010 following the same trend as the HIV epidemic where a plateau phase is expected from about 2005.

The gap between the projections with HIV/AIDS and without HIV/AIDS is taken to represent the impact. The discrepancy between demand and supply remains however so substantial that it begs the observation that the macro-demographic impact of HIV/AIDS may not in fact result in a substantial decrease in the existing gap between demand and supply. Projections have been undertaken in respect of the total demand for income groups earning less than R 3 500 by incorporating housing supply until 31 December 2001 (Khayamandi, 2002). These projections estimate that in 2001 there was a difference in housing demand attributable to HIV/AIDS impacts, of close to 15 000 households. However, they also demonstrate that irrespective of HIV/AIDS impacts, the demand for housing will outstrip supply, which demonstrates that as far as demand for housing, is concerned, in the short- to medium-term macro-demographic HIV/AIDS impacts have not alleviated

what still amounts to a substantial demand. While over time, the demand is posited to decrease, asserting that demand will still outstrip supply by 2010 and even 2015 is a robust conclusion. There will, however, be some provincial variations in respect of the gap between housing demand in an HIV/AIDS context and without HIV/AIDS, with Gauteng and KwaZulu Natal being the two provinces where the gap in demand with and without HIV/AIDS being the most substantial (Khayamandi, 2002). Whilst this gap needs to be considered, it is again worth stressing that it will not eradicate demand. For example, while in 2010 this gap amounts to close to 70 000 households in Gauteng, alone, in 2001, the number of households residing in informal settlements amounted to 529 240 households (Cabinet Memo, 2001). This figure does not include households that may be living in overcrowded conditions and backyard shacks or which may be entitled to a housing intervention. The total housing backlog has been estimated at 750 000 households by 2002 (HSRC, undated). Projected delivery capacity in the province will not exceed 123 600 serviced stands by 2004/05. These figures demonstrate that the gap between supply and demand for housing and urban land will remain substantial in spite of the macro-demographic impacts of HIV/AIDS. Indeed, the historical and development context of South Africa is one where landlessness is so entrenched that even the devastating macro-population impact of HIV/AIDS is unlikely to substantially reduce the demand.

### *Macro-economic impacts of HIV/AIDS decreasing accessibility to land markets and broadening eligibility*

A macro-demographic impact perspective, as above, suggests that HIV/AIDS will not substantially decrease the demand for housing and inter alia urban land. Another perspective on the impact may be framed by considering the macro-economic impacts of HIV/AIDS, and how these would relate to the demand for land and housing as a factor of income eligibility. While macro-economic impact research processes have, to date, been in agreement, in as far as they all foresee a profound impact on the country's economic outlook, the exact nature and extent of projected impacts may vary. The first model developed to produce reliable estimates of the progression of HIV/AIDS in South Africa was the Metropolitan-Doyle model formulated in 1988. It has since been reviewed, and followed by other models including the Actuarial Society of South Africa Model. Most models are based on some form of projection of the impact of the HIV/AIDS pandemic on the population differential and apply the findings to macro-economic inputs and output projections based on specific economic linkages by reviewing demographic impacts on growth scenarios. The non-alarmist scenario forecasts of ING Barring (2000) predict that GDP trends growth is forecast to be on average 0.3-0.4 percentage points per annum lower than on a no AIDS baseline. In their 1997-2010 impact simulation exercise, Arndt and Lewis (2000) find that GDP levels could be 17 percent lower in an AIDS scenario. Irrespective of the full scale of the impact of HIV/AIDS on the macro-economy, it is clear that its outcome may be such that the total income per capita and total consumption per capita can decrease dramatically.

Tomlinson (2001) suggests that in a context of globalisation where formal employment is on the decrease in South Africa, increasingly the ability of a critical mass of the population to access housing (and inter alia urban land) will diminish. Overlaying the macro-economic impacts of HIV/AIDS on the current trends of pauperisation and its implications for access to land paints a dark picture of increasing vulnerability. In fact, decreasing per capita incomes may result in situations where, households that would otherwise not be eligible for state assistance in terms of the current subsidy eligibility criteria, become theoretically eligible (from an income threshold perspective alone) because of the macro-economic impacts of HIV/AIDS.

### *Changing population profile*

Contemplating demand in macro-demographic and macro-economic terms only would be highly inappropriate. Indeed, the demographic impacts of HIV/AIDS are far more insidious and transformative. A closer, more nuanced, consideration of demographic impacts is required. HIV/AIDS is already changing, and will continue to change, the demographic structure of the South African population. In Figure 2 and 3 below, population

pyramids are captured for 2015, in a no AIDS and AIDS scenario (ASSA, 2000). The two population pyramids show the difference in population structure in 2015 that would be due to HIV/AIDS.

Figure 2: Population Pyramid 2015, no AIDS scenario (ASSA, 2000)

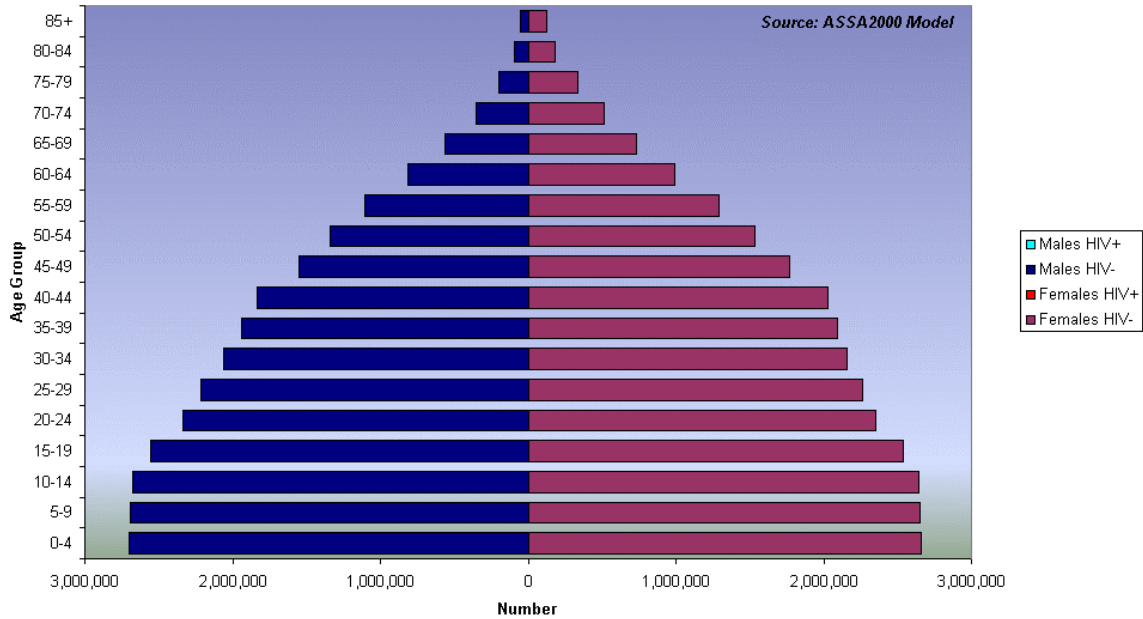
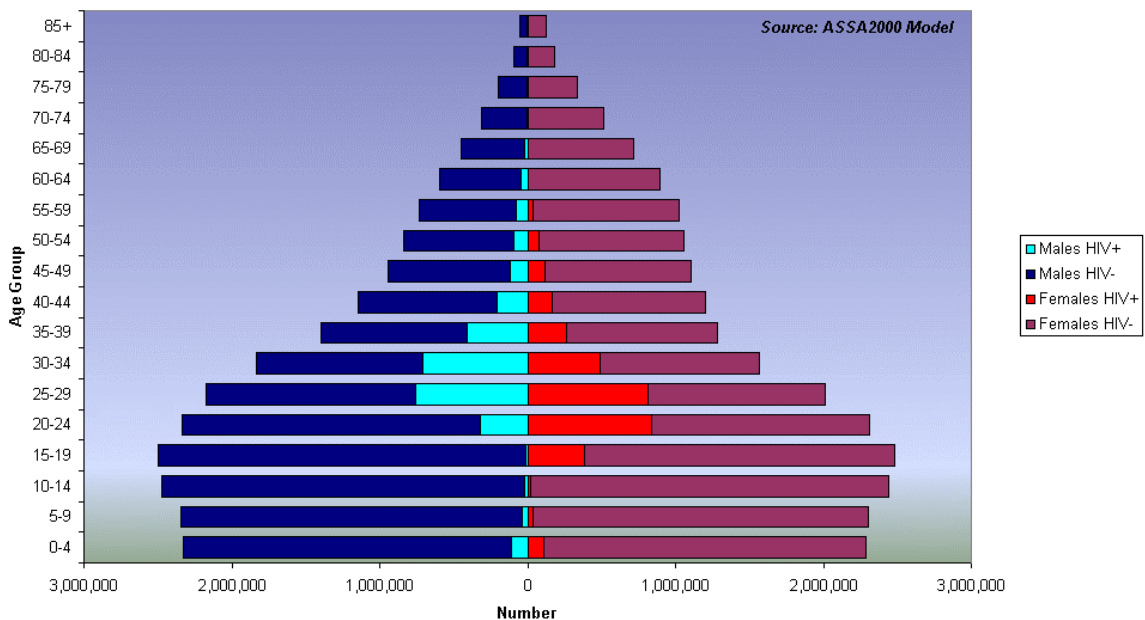


Figure 3: Population pyramid, 2015 (no change scenario) (ASSA, 2000)



The population pyramid contained in Figure 2 is typical of that of a developing country with its symptomatic broad base. Figure 3 provides a graphic representation of the substantial shifts in population profile in 2015. There, a few observations can be made. Firstly, the base of the pyramid has shrunk substantially, suggesting

an important decrease in the rate of natural population increase, due largely to increasing infant mortality as well as an overall decrease in fertility levels. Secondly, the ratio of male to female population is substantially skewed in favour of males, who are generally much less vulnerable to HIV infections. Thirdly, there is a much more pronounced decrease in the proportion of the population aged 25 to 60, signifying a substantial shift in household dependency ratios, and suggesting a substantial rise in the number of orphans and young adults without one or two parents. These demographic changes will have profound economic, social and political impacts both at the micro (household) and the macro (national) level. These changes will affect existing client categories, as defined in the terms of reference of the scoping paper. They are also likely to create new client categories and fragment existing ones. For example, in 2002, the national number of AIDS orphans was 279,102 (CSA, 2002). This figure will increase substantially by 2015, arguably beyond the carrying capacity of social networks that have historically provided care and guardianship support to orphans. This is already and will continue to give rise to household profiles that differ from current household profiles. These household profiles and client categories may have substantially different requirements from land as an economic, social and shelter asset and abilities to sustain such assets. Similarly, the contextual parameters in which land is held and trade are likely to change. To explore these dimensions, this report now turns to other thematic impacts, by drawing on literature documenting empirical research undertake 5 key studies:

- “The impact of HIV/AIDS on the demand for low cost housing” undertaken by Khayamandi (2002) which surveyed a total sample of 2935 respondents frequenting HIV/AIDS support groups and clinics,
- “The Socio-Economic Impact of HIV/AIDS on Households in South Africa: Pilot Study in Welkom and Qwaqwa, Free State Province”, by Booyesen, F. le R., Bachmann, M., Van Rensburg, H.C.J., Engelbrecht, M., Steyn, F. and Meyer, K. (2002) comparing socio-economic changes between 406 HIV/AIDS affected and non-affected households longitudinally;
- “The impact of HIV/AIDS on land issues in KwaZulu-Natal province, South Africa”, by Cross, C. (2002) documenting and analysing detailed case histories of 20 HIV/AIDS affected households;
- “Hitting Home: How households cope with the impact of the HIV/AIDS epidemic” by the Health Systems Trust (2002) documenting and analysing the findings of a survey of close to 800 HIV/AIDS affected households; and
- “Impact of HIV/AIDS on the construction sector and in turn on the implementation of the Housing Policy”, Development Works (2002) documenting the findings of in depth primary and secondary research on the impacts of the range of delivery agents active and supply systems through which the Housing Policy is implemented.

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### Implications of HIV/AIDS morbidity and mortality on spatial planning and land use

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HIV/AIDS is a chronic disease. Most infected people only show signs and symptoms of disease after many years, thus the extent and impact of the epidemic remains hidden. The average time from HIV infection to testing HIV positive is 2 months (the so-called “window period”). The average time from contracting the virus to the onset of AIDS is 10 years (Abt, 2002). Average survival following an AIDS defining condition is 2 to 3 years, without anti-retroviral treatment. HIV infection results in a progressive weakening of the immune system. This makes a person susceptible to a wide variety of opportunistic infections and cancers. Secondary infections due to lower immunity occur at stages of disease before development of AIDS itself. Secondary diseases that are termed “AIDS defining conditions” occur in the end stage of the natural history. Diseases associated with HIV infection occur such as tuberculosis, diarrhoeal diseases and pneumonias (Ibid). These physiological changes, ultimately resulting in the death of the HIV/AIDS victim have direct requirements and implications from the manner in which land is held and transacted. The following focuses on land dimensions in as much as they relate directly to HIV/AIDS infected individuals (as opposed to households which are considered in subsequent sections). This section first raises issues relating to the physiological requirements from land and space in relation to access to health and other services as well as shelter requirements. It then

considers impacts in terms of migration. Burial practices and the impact of HIV/AIDS morbidity on land are considered last.

The health care support requirements of HIV infected individuals progressively increase and become more complex with the onset of AIDS defining conditions. In the Booyesen study, it was found that government health services were the most common source of health care. Ill members of affected households in most cases attended a government clinic and in some cases attended a government hospital. In contrast, ill members of non-affected households were most likely to have attended a government clinic. Similarly, the Khayamandi research showed the significance of access to government hospital as a preferred source of care over other options. It is worth noting that the current health care dispensation in respect of the treatment of HIV/AIDS victims is promoting home-based care as a substantial source of care. Importantly, this option has not been consistently applied in all provinces or municipalities. Further, the emphasis on deconcentrated primary health care through the establishment of community clinics and related services means that the spatial accessibility of the preferred source of service (government hospitals), will be challenging for a substantial majority, in the context of urban South Africa marked by spatial fragmentation and dislocation. This suggests that the continued peripheralisation of access to urban land (through both formal and informal delivery channels) appear particularly at odds with the health-care requirements and preferences of HIV/AIDS victims.

Migration of infected individuals was noted in both the Khayamandi and Booyesen research. In the Khayamandi research, the main reasons for individual as opposed to household mobility were reported to have been due to the desire to leave the family, for privacy and independency and to get care and support. Discrimination against HIV positive persons accounted for 8.10% of the HIV positive persons migrating. This low percentage however, should be considered against the fact that only 8.1% of those that are HIV positive told their neighbours and only 20.7% told their friends of their HIV positive status. In the Booyesen longitudinal research, 14 out of 406 households could not be interviewed again due to reasons related to migration. In affected households more than a third of persons moved because of relatively uncommon reasons, i.e. to stay with parents, other family or friends, or because of illness or death. The migratory patterns of HIV/AIDS affected individuals were characterised in both pieces of research as atypical to the migration patterns of non-affected households and individuals. Importantly, whilst it is worth noting that historically, land and urban policy responses to migration have been at worst particularly repressive and at best unaccommodating, there is no indication that the HIV/AIDS implications for individual mobility are being considered. Of greater concern, Tomlinson (2001) argues in respect of housing and shelter issues, it is due to the instability of households and individuals affected by HIV/AIDS, and their inability to afford adequate shelter of some sort and to pay for services that governments' approach to housing policy is particularly mis-guided as it results in the permanent allocation of fixed assets and services which affected individuals cannot sustain without substantial assistance.

The shelter needs of HIV/AIDS victims have received some research and policy consideration from a minority of provincial organisations. In the Khayamandi research, a large proportion of respondents indicated closeness to health centres as the most important locational attribute for a housing unit. This was followed by 18.6% of respondents across the spectrum of settlement context stating that they would prefer to move to urban area and 9.4% close to where they live currently. The question of temporary hospice-type shelter, to accommodate the shelter and health care needs of individuals that are in the last stages of AIDS defining conditions appears to be the subject of differing opinions. For example, the Khayamandi research seems to suggest that this would be preferred by a substantial proportion of HIV infected respondents. This would seem to suggest that access to land (as a proxy for shelter and tenure) may need to be granted on a temporary basis. On the other hand, on the basis of her interaction with HIV/AIDS support groups and NGO's, Liz Floyd HIV/AIDS co-ordinator for the Gauteng province suggests that as a result of HIV/AIDS awareness raising activities in the province, the level of stigma associated with the disease has substantially decreased (Floyd, Presentation at the DBSA, June 2002). In turn, this has meant that HIV infected individuals are less wary of disclosing their status to their neighbours and friends than would otherwise be the case, or of remaining within their

communities and household even through the last stages of the epidemic. She further contextualised the trend by emphasising the successful establishment of home-based care systems and support group throughout the province. This would suggest that where the support environment is established the temporary nature of access to a particular type of shelter (and inter alia tenure arrangement) may need to be de-emphasised. The diversity of perspective is not easily resolved in the absence of dedicated research findings. It is however plausible to assume that this diversity is context specific and may call for a range of responses. Paradoxically, it is in respect of the housing needs of HIV infected individuals in the last stages of the disease that policy responses have been most forthcoming, although only in a limited number of provinces. In particular, the use of institutional housing subsidies to provide for the setting up of hospice-type accommodation is receiving substantial attention. Typically, this approach aligns with the categorisation of HIV/AIDS impact in policy and departmental structures as part of a “special needs” grouping of issues that also typically incorporate women and the disabled. This “special needs” approach is symptomatic of an institutional system that is yet to mainstream the implications of the range of HIV/AIDS impacts in policy, programmes and projects.

Disposing of the bodily remains of AIDS victims is also featuring as an issue which government role-players, in particular municipalities, whose sphere has competency over cemeteries, are attempting to grapple with. N Botha, Deputy Minister, Provincial and Local Government, as part of a speech given at a symposium on local government and HIV/AIDS mentioned increasing demand for land for cemeteries and incidence of pauper burials and poverty-relief programmes as particularly challenging to municipalities. Harber (2002) depicts the horror of cemeteries as freshly ploughed fields, over-spilling into public open spaces and roadways and the abandonment of cadavers for pauper's burials. He forecasts that in five years' time South Africa will require 65 ha of land each month to bury the additional bodies of HIV/AIDS victims in both formal and informal burial grounds to sterilise residential land. Whilst this issue has been identified as problematic, its full scale and implications have yet to be ascertained.

### **HIV/AIDS impacts on livelihoods and land**

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Sunter and Whiteside (2000) posit that AIDS will have a greater livelihood impact than death from other causes. Their suggestions as to why this may be so include, the protracted nature of HIV illness and the lengthy depletion of household resources giving rise to greater and more enduring hardship than other causes of death. They note in particular, that not only does poverty help drive the epidemic, but that AIDS increases poverty levels and socio-economic inequality.

The following section unpacks how HIV/AIDS impacts on livelihoods based on the findings of documented research on the socio-economic impacts of the pandemic, as follows:

- The section first explores the household economic impact of the pandemic by considering how HIV/AIDS impacts on income and expenditure streams and extent. It also explores financial coping strategies such as the use of savings, borrowing and asset disposal as well as long-term planning and preparedness;
- Then, household transformation patterns are considered in terms of household size, dependency ratios, mobility and organisational capacity;
- Finally, consideration is also given to the broader community and settlement level impacts.

### ***Economic impacts on the household***

The economic impact of HIV/AIDS on households is concerned with considering how the pandemic interfaces with household income generation, expenditure and financial strategies (in the short and long-term). These considerations are then used to draw some findings in terms of the effects of HIV/AIDS impacts on livelihoods.

### **Impact on income generation**

Impact on income generation is creeping in nature and affects the individual and other members of the immediate and extended HIV/AIDS affected households, as well as members of the community in which they reside. After the onset of AIDS defining conditions, where unavailability of treatment combined with a lack of food security, opportunistic infections together with a decline in productivity levels means that both formal and informal (and even survivalist) economic activity substantially reduces income streams. It is however, not only a case of the AIDS victim losing income opportunities. In the Booyesen study, it was found that most households with ill or dying members carried a burden of caring. More than 60% of ill people required someone to care for them at home, while more than half required someone to accompany them to health care. Critically, the Health Systems Trust research noted that although a range of grants (including disability grants) exist that may alleviate a loss of income due to HIV and AIDS morbidity, the take up rate of the grants is often low. As mortality sets in even extended family members, neighbours and friends are also mobilised to attend funerals and provide support to the bereaved immediate household members. It is important to stress that in South Africa, the economic impact is being overlaid on a household and community-level economic context which is already weak and where more than 40% of the potentially economically active population is unemployed.

### **Impact on expenditure**

Increase in the extent and changes in the patterns of household expenditure are driven by morbidity and mortality. In terms of morbidity, the Khayamandi research found that close to 40% of the HIV positive persons reported that their overall expenditure had increased. Those that indicated an increase in overall expenditure, reported the reasons to be increased payments treatments and increased food and medication required. In the comparative Booyesen research, it was found that substantially larger proportion of household resources were allocated to expenses on food and health care, while a smaller share goes to expenditure on education, clothing, personal items, transport and durables. The share of expenditure on household maintenance, rent in regular, monthly household expenditure is more or less similar.

The Booyesen study found that a death puts a much greater financial burden on a household than does illness. In a worst case scenario, the burden on affected households amounted to 3.4 to 4.3 times average monthly household income and 5.7 to 7.2 times average monthly household expenditure. Unlike in the case of illness, the cost of a death to households remain high even where unemployment levels are very high and household members are primarily cared for by relatives with no direct loss of income. This can be attributed to the fact the funeral costs are very high and represent the largest share of the cost of mortality. The average direct cost of mortality to affected and non-affected households respectively amounted to R 3928 and R5018 per death. The Health Systems Trust research corroborates the scale of the impact of AIDS deaths on household expenditure patterns and noted that rural households spent 350% of total monthly household income on funerals, compared to 500% in urban areas. What is significant about the nature of this expenditure is the sudden drain it places on household resources which have to be mobilised at once and will not be used for any productive purpose (i.e. they are primarily geared to cover funeral costs). Furthermore, in spite of signs of approaching morbidity, the extent to which affected households are able to mobilise resources to cover funeral costs in advance appears limited. The Khayamandi research revealed that few respondents had made arrangements to cover the immediate and longer-term costs associated with their passing. This should perhaps be contextualised in the light of the widespread practice of burial societies, informal savings clubs that pool together their members' resources to cover funeral expenses thereby cushioning the sudden nature of such expenses. It is, however, highly plausible that increasingly, the savings capacity of such societies is being depleted with the increase in AIDS related mortality. This confirms the findings of the Booyesen research which found that relatively few households that had experienced a recent death received a lump-sum payment or inheritance following the death, underscoring the few means poor households have to cope with such deaths.

Changes in expenditure patterns do not stop after the death of HIV/AIDS cases in the household. The Booysen research found that when comparing regular expenditure patterns in households that have not had to cope with a death and were affected by a death it was found that household affected by death spends relatively more of their available resources on food, health care, clothing and rent, and a less on education, household maintenance, transport, personal items and durables compared to households where no death had occurred in the six months before either interview. However, in terms of households affected by multiple deaths changes in expenditure patterns are particularly dramatic, with rent, durables and transport almost falling out of the picture in favour of expenditure on health care, food and other basic necessities.

### Financial coping strategies

In order to cope with decreasing income and increasing expenditure, households can draw on four types of coping strategies: i.e. to borrow, to utilize savings, to sell assets, or to seek to increase income. The Booysen study found that the most frequent responses of households to financial crises seem to be borrowing, followed by the utilization of savings and the sale of assets, with a considerably larger proportion of affected households that had utilized these strategies also being affected by illness and/or death. In the total affected and non-affected samples money was borrowed from relatives and friends in almost 70% of cases. The magnitude of dissaving is considerable as affected households gradually deplete their savings as the costs of morbidity and mortality increase and at the time of the latest wave of interviews in the longitudinal study had utilised up to 46 months of current savings, whereas non-affected household only utilized 5 months of current savings. Moreover, affected households on a monthly basis save approximately 40% less than non-affected households. Only a very small percentage of households sold assets. Affected household that sold an asset were respectively affected by illness and death. The small number of assets owned by the average household explains why only a very few households were able or willing to exercise this financial strategy. Households primarily sold household appliances, livestock, furniture and vehicles. Proceeds from asset sales represent a very substantial financial coping mechanism and were used to pay for food or to repay debt. The Khayamandi study, confirmed the practices of dissaving and borrowing but also noted the existing high levels of household debt owed by the households, which amounted on average to 4 times the amount of household income. The Cross study found that the household labour and asset mobilisation ability of HIV/AIDS affected household was minimal and that successfully developing and implementing alternative income generation strategies appeared to present insurmountable challenges for such households. Of note is urban and peri-urban contexts is the widespread practice of informal rental as a means of income generation. Recent media coverage has periodically raised some of the risks associated with weakly structured headless households unable to maintain a hold over their assets in such situations of informal rental, although there is insufficient empirical evidence pertaining to the extent and implications of informal rental practices as a financial coping strategy.

The above provides some insights into the coping practices for managing (albeit poorly) the household economic impacts of pandemic. These practices are emerging in a post-hoc manner. The Khayamandi research provides some insight into the extremely limited extent to which affected individuals anticipate their responses and that of other affected practices to cope with such economic impacts. Almost none of the focus group members had made future plans for their current housing situation, money owned to state, money for food or money for education. The majority also indicated that their relatives (mostly grandparents) would take care of their children in the event of death. Only 26.0% of the interviewees with a HIV positive status have a funeral policy. Only 14.7% have insurance policies taken out with their children as beneficiaries, while only 8.0% of the HIV positive members of the households have a will. This was seen to suggest that HIV positive individuals are undertaking almost no formal future planning strategies. Close to 70% of the households that were interviewed indicated that they had no plans for the money they owed. While, 12.3% indicated that their relatives will take care of it, and 8.2% indicated that their employers will be responsible for the debt. Only 0.5% indicated that this burden will be paid off by their savings. The emerging picture is that not only are HIV/AIDS affected households submitted to substantial economic stresses in the short term, through AIDS morbidity and



mortality of infected members, but the absence of forward planning for longer-term economic survival means that livelihood production and reproduction opportunities in the longer-term remain uncertain.

### *Social impacts*

The wide ranging household demographic and economic impacts also give rise to far reaching social impacts. To start with, they affect the household profile. As was explained in the section pertaining to the macro-demographic impact and in turn on the demand for land, HIV/AIDS is likely to generate new client categories. The following explores in more detail, again by drawing on the findings of primary research, some of the household and community composition impacts and draws implications in terms of livelihood and in turn land as an asset that supports livelihoods. Secondly, this section also explores how HIV/AIDS interfaces with exiting practices in relation to accessing and retaining land as a livelihood supporting asset. This will be undertaken by drawing on case level research as well as anecdotal evidence arising from Development Works project work.

#### **Changing household profiles and client categories**

The household structure which most housing and land delivery policies are premised on is becoming increasingly at odds with the reality of South African urban and peri-urban households. It is worth noting that whilst little empirical research has been done to establish a typology and extent for the range of household types, it is also highly unlikely that, historically, the majority of households have neatly aligned to the nuclear model of two parents with children on which policy is premised. Instead, a wide array of household types with multiple generations and transient members has been established, in parts due to the distorting impacts of Apartheid urbanisation policies. HIV/AIDS is a new factor of household profile transformation.

In the Booyesen study, it was found that affected households on average are slightly larger than non-affected household in terms of household size and that the dependency ratio in affected household are higher than that in non-affected households, implying that households affected by HIV/AIDS in fact have a smaller supply of labour than non-affected households, with a larger proportion of the household consisting of children and elderly persons. The Health Systems Trust research noted the sudden growth of HIV/AIDS affected households, being augmented by orphaned children and unemployed family members, once the impact of morbidity in the household and its extended family sets in. The Booyesen study highlighted the fact that almost a third of households- both affected and not-affected- in the sample sheltered at least one orphaned child. It found that mortality in particular induces household migration among affected households, especially among younger persons (i.e. teenagers). This emphasises the fact that even if households do not contain an HIV infected individual they are vulnerable to the effects of HIV/AIDS morbidity and mortality, thus stressing the pervasive nature of the social impacts of HIV/AIDS.

Typically the change in household size, coupled with a change in dependency ratios suggests that prospective beneficiaries of land delivery interventions are becoming poorer by having to stretch their already meagre assets to cover a wider range of members. Tomlinson (2001) stresses that the current housing development approach is fundamentally at odds with the demographic and socio-economic impacts of HIV/AIDS on target beneficiaries. He argues in particular that while still functioning families and including extended families that are sustained by relatives (who typically move into the dwelling unit) will warrant the continuation of pre-existing housing policies; families headed by HIV infected adults, child-headed families, expelled HIV positive family members, homeless children (not all of whom will be orphans and some proportion of whom will be HIV positive) will require shelter of some sort. However, the type of shelter benefit which may be required for the later cannot be effectively addressed by a stand-alone starter house, with services and individual ownership rights. For instance, reliance on extended family structures has resulted in severe overcrowding, which can lead to hygiene and sanitation problems (BESG, 2001(b)). This is a significant factor of stress on the

beneficiaries of the Housing Policy, who are affected by HIV/AIDS. Importantly, Tomlinson notes, while the policy is premised on the incremental household development by beneficiaries of their starter houses, the increased poverty brought about by HIV/AIDS and rising unemployment levels will not enable households to invest in housing development so that household savings, a precondition for accessing a housing and land benefit within the current policy dispensation and for developing, consolidating and maintaining physical land and housing assets, will be used to care for the sick and pay for burials (Tomlinson, 2001). In a nutshell, the current policy assumption that households are in a position to prioritise land and housing as a desirable asset acquisition option is being challenged by the socio-economic realities facing HIV/AIDS affected households and communities.

### **AIDS orphans and vulnerable household profiles**

In the Khayamandi study it was found that children headed almost 5% of the households in the survey. Although this is a substantial proportion of the research sample, it is worth noting that the research specifically targeted HIV affected households. Nevertheless, it is also worthwhile considering the range of implications which the existence of child-headed households bears in terms of livelihoods and more directly in terms of accessing, holding and transacting in land. It is estimated that there will be almost 2.1 million orphans by the year 2010 (CSA, 2002). This is a substantial client category at a globular level. However, it is also worthwhile emphasising the different household formation routes that are available to orphans in the South African context. The Cross study, is particularly informative in respect of the new types of client categories emerging from the social impacts of HIV/AIDS. It offers insights into a substantial variety of household profiles that have become pooled together even temporarily as a means to weather the impacts of HIV/AIDS and poverty. Importantly, the study highlights the lack of definitional clarity of the term “child-headed” in terms of age as well as dependency profile. It explores the emergence of households of orphaned young adults aged between 18 and 25 with or without children who temporarily come together and notes that some young adults return to live with their parents and/or grand parents once a partner has died or once they themselves become ill. This type of practice is important to consider in relation to the assets available to the receiving households. Typically, these include land or housing or in the case of grand parents a monthly pension which provides some, albeit extremely limited, regular income. The research makes specific mention of the emergence of a class of young adults whose shelter options are increasingly being limited to informal rental tenure. These new client have different requirements for urban land and shelter. They may also have different obstacles from accessing, holding and retaining land.

The Cross study unpacks some of these aspects in relation to land administration matters. Cross explains how the customary practices of holding land through patrilineal family clusters has remained, albeit in diluted forms, and is giving rise to a spectrum of land acquisition and dispossession patterns from vulnerable households. These range from extended family-aided and abated “land snatches” and outright dispossession to more supportive practices of guardianship of vulnerable household members and their assets, including land. She notes in particular that households that are vulnerable to being deprived of their land assets are not specifically child-headed but include a range of household profiles that are mostly financially unviable. This occurs particularly, where the head(s) of household whose tenure rights had historically been confirmed, has died leaving behind an array of loosely organised dependents, often with their own children. The issue of household non-viability is expressed as a notion that partially underlies the practice of dispossession. In a rural and peri-urban context household viability can be measured against the household’s ability to mobilize labour to cultivate land and uphold the value of land as a productive asset. In an HIV/AIDS context, a headless household, who has had to bear the economic brunt of HIV/AIDS morbidity and mortality, is often unable to mobilise its members to undertake cultivation activities, thus becoming even more vulnerable to food insecurity. Historically, Cross argues, a household that could not uphold the productive value of land would be incorporated into another household to ensure that its members would be cared for, that the asset value is realised and that it remains within the extended patrilineal family cluster. Whilst the customary practice is more visible in rural contexts, Cross also notes that extended family members who reside in urban settings are

known to reclaim land in rural areas for such purposes. In the course of Development Works projects anecdotal evidence has also emerged that this historical practice is being called upon to access the property of extended family members by dispossessing vulnerable household members, often without their benevolent absorption into a new household. In Homeless People's Federation projects, anecdotal evidence has emerged that the dependants of the members of a communal property association are risking falling prey to the land owning aspirations of their relatives. The strong community self reliance and mutual support and protection practices of Federation groups have, however, been instrumental in safeguarding these vulnerable rights. Recent media coverage has also recently identified the particular vulnerability of HIV/AIDS affected households to land and housing snatching practices. Whereas the original customary practice linked the asset dispossession to the benefits of guardianship the extent to which the latter aspect of the practice is still retained within both peri-urban and urban contexts without strong community mutual protection and support remains unclear.

Of note are the findings of the Khayamandi research which emphasises that almost none of the focus group members had made future plans for their dependents. The majority indicated that their relatives (mostly grandparents) would take care of their children in the event of death. Only 8.0% of the HIV positive members of the households have a will. Not only would this lack of preparedness leave dependents open for dispossession but it also raises the difficult question of how to address the rights of the dependents of beneficiaries who die prior to transfer of property. This issue is particularly complex. It pits a range of interests against one another. First are the rights of the dependents of the beneficiary. Second are the commercial rights of organisations acting as developers who bear the holding costs associated with not being able to finalise the transfer of the property in the name of the intended beneficiary. Typically, together with the costs associated with remedial action, these amount to R 1 600 per site (Development Works, 2002). Third, are the more amorphous but nevertheless significant interests of the landless as a group, whose opportunities for gaining legal access to land is reliant on climbing the tortuous ladder up the waiting list but who may be economically and socially able to sustain the costs of maintaining access.

At face value comparing the virtues of the first and third interests may seem futile and even insensitive. Yet, in an urban context, household viability is often a pre-condition for maintaining access to land and housing as a shelter asset. Tangible costs such as payment for services, rent, rates, and basic maintenance are influential in maintaining access to the asset. Households that are affected by HIV/AIDS may not be in a position to meet these requirements. In such conditions, for the most vulnerable households, an asset may become somewhat of a liability. Although the practice of informal transfers and resale of RDP houses and sites and services erfs has yet to be quantified, it is known to be a survival strategy in the face of economic hardship irrespective of HIV/AIDS. It is plausible that in a context of HIV/AIDS this practice will amplify. Aside from the implications which this may have for the integrity of the property registration systems, it is worth noting, as Tomlinson (2001) does that the shelter needs of particularly vulnerable households may not be met by maintaining an economically and socially unviable household on land and in housing units that they can ill afford and that does not meet their socio-economic care requirements. There is some, although limited, media-related evidence that in an effort to become financially viable vulnerable households are taking to renting informally land in their backyard or rooms in their house to eek out an income lifeline for themselves. While this may indeed be a critical coping strategy, it has also given rise to situations where the tenants, realising the vulnerability of the household, take over the household and the property.

### *Social impacts on the community and settlement*

Although research has been undertaken at the household level to consider socio-economic impacts, community-level impacts have yet to be investigated. However, considering the outcomes of some empirical research together with anecdotal evidence gathered through interaction with role-players enables the identification of issues for consideration. In this respect, two perspectives have been noted. The first

perspective is that where social networks are strong and self-regenerating, they offer a level of protection from socio-economic impacts and attenuate their effects. The second perspective posits that by drawing on social networks to weather the socio-economic impacts of HIV/AIDS affected households weaken and strain these networks and the households that are not directly affected. These perspectives are neither entirely complementary nor contradictory, and would require more empirical consideration, than is possible here. However, because both have a bearing on the impacts of HIV/AIDS on livelihoods and in turn on land as an asset, they should be considered.

Anecdotal evidence suggests that strong social networks offer protection to vulnerable households in the face of HIV/AIDS. For instance, in the Development Works study it was reported that the extensive community mobilisation process involved in the people's housing process, provides a platform around which to successfully consider and respond to the socio-economic impacts of HIV/AIDS at the household and community level. The durable group mobilisation and development ethos practiced by the Homeless People's Federation has seen communities intervening to protect vulnerable households from the usurpation of land rights by relatives after the death of the household head. These responses suggest that social assets can support HIV/AIDS affected households in the face of HIV/AIDS.

An important dimension of HIV/AIDS economic impacts that is often not considered is how the community-level impacts may amount to more than the sum of the impacts on households within a given community, thereby turning social assets into social liabilities. In the Booysen study, it was found that, where borrowing was used as a financial coping strategy, in more than 60% of cases the money was borrowed from relatives and friends. In the Khayamandi study, expectations that family and friends would provide guardianship and debt repayment support is emphasised above. Rural settlement level research undertaken in the Mount Frere area (Economic Policy Research Institute, 2002) indicated that the social custom of providing material and emotional support to bereaved persons is fast depleting assets held throughout the community, so that even households that are not directly affected by the death of a member come under strain in order to support those that are. Although this practice originates in rural areas, it is probable that it persists- even in a diluted or transformed manner- within urban settings; after all, the practice of burial collections in the workplace is very much alive. Similarly, sheltering orphans is visibly adding to the vulnerability of weak communities. These and other concerns suggest that there may be vulnerability thresholds for socio-economic networks beyond which HIV/AIDS impacts precipitate communities and settlements. In such an ultra-vulnerable context the ability of communities to articulate a demand for land, to access and maintain access over land may become even more precarious than is currently the case.

### Impact of HIV/AIDS on supply systems

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The previous three sections have considered how HIV/AIDS will interface with the demand side of urban land. This fourth and last section is concerned with how HIV/AIDS will interface with the systems of delivery of land in urban contexts as well as the specific delivery agents that are involved in the administration and development of land, from a demographic and economic perspective. This section draws specifically from research undertaken by Development Works on the impact of HIV/AIDS on the construction sector and in turn on the implementation of the Housing Policy from 2001 to 2002. Whilst the scope of the research was much broader than simply considering land related impacts, it generated important findings in respect of the housing supply systems which typically involves the delivery of land as well as the specific delivery agents and occupational categories involved in the delivery of land.

#### *Demographic impacts of HIV/AIDS on occupational categories active in the land administration and delivery sector*

A range of delivery agents are involved in the supply systems through which land is made available, in particular where land is made available as part of subsidised housing delivery systems. When focusing on land, however, specific delivery agents are drawn upon. These include institutional role-players who are delivery agents active within the national, provincial and municipal spheres of government as well as technical and professional role-players in the surveying, engineering, planning and conveyancing professions in the public, private and not for profit sectors. In the housing and land delivery environment, public sector institutional role-players are involved in the screening and approval of project proposals and subsidy applications as well as the processing of subsidy draw downs (claims). The land assembly and planning component requires the involvement of municipal authorities, provincial authorities or other land development authorities. It includes the property registration system governed nationally by the Deeds Office and the Surveyor General's Office. It is, however, in the private and NGO environment that most of the site specific professional activities are performed (such as surveying land portions, developing layouts, engineering designs, compiling title deed information, and project management). The roles of private and non-profit delivery agents are often distinct from those performed by public sector delivery agents; however, they are ultimately complementary. If one set of role-players is unable to perform their roles, the other role-players will also be hindered. Hence, if one set of delivery agents is vulnerable to the demographic and economic impacts of HIV/AIDS, this means that other delivery agents will likewise be vulnerable.

Institutional role-players in the public and non-profit environments are generally operating in a shallow base of organisational capacity, in terms of the level of skill held, the number of staff and the paucity of administrative and decision making systems. Although the private sector is generally able to attract and retain skilled personnel, in respect of land related delivery agents, these are not only increasingly shying away from low-income land and housing delivery processes in favour of high income residential, commercial and industrial developments, but also favouring more upwardly mobile sectors such as the financial and information technology sectors. Overall, this means that the availability of required technical and professional capacity to the land and housing delivery systems is becoming narrower, irrespective of the impacts of HIV/AIDS.

The occupational categories representing this broad type of delivery agents include professional support as well as on site professionals and technicians categories. Analysis of the 1996 Census data to estimate current and future prevalence, morbidity and mortality for the range of occupational categories found in the delivery of land and housing found that HIV infection levels among professionals and technicians on site are set to rise from below 9% in 2002 to 12% in 2006 and just under 15% in 2010. While the current infection levels are already fairly high for this occupational category, the visibility of the impact of the epidemic is much lower. Indeed, the AIDS epidemic lags behind its HIV predecessor, so that at present both the number of people ill with AIDS and the number of AIDS deaths are less than 1 per hundred persons. These figures are however set to increase to over 1 per fifty and 1,5 per cent respectively in 2010. A further factor masking levels of AIDS is likely to be greater access to antiretroviral drugs in this group, which tends to have higher access to medical aid cover. This suggests that a demographic impact on this group of delivery agents could leave a vacuum. Among the professional support occupational category HIV infection levels in this occupational category are set to rise from 9% in 2002 (1 in 11) to 12% in 2006 (1 in 8) and just under 14% in 2010 (1 in ±7). While the current infection levels are already fairly high, much of the demographic impacts in this occupational category are not significantly visible as the projections estimate that currently less than 1 per cent of this occupational category is either ill with AIDS or will die in the year from AIDS. This is set to rise to increase to over 2 per cent and 1.5% respectively in 2010, according to the projections. There is not only existing high staff turnover within given organisations, especially in the NGO and public sectors, but also large provincial disparities in the extent to which specific provinces currently have such resources within their geographic jurisdictions. In respect of these types of delivery agents, from a demographic perspective only, the impact of HIV/AIDS is likely to aggravate a situation where skills and capacities are already weak.

*Economic and policy implementation impacts of HIV/AIDS*

HIV/AIDS will have demographic and economic impact on the supply systems that will affect the cost of production of delivery the full package of benefits included as part of housing interventions, including land. The quantification of the average extra costs attributable to HIV/AIDS economic impacts was estimated at between 0.95% and 0.58% until 2006, depending on the supply system. While these costs might appear negligible, in the subsidised land and housing delivery context, they were nevertheless deemed to be tangible. The extent to which the extra costs of production will affect the implementation of the housing policy should be considered in relation to the systems' intrinsic vulnerabilities and those of the provinces in which they are applied. In the short term, these vulnerabilities were said to potentially represent a greater threat to the policy's implementation than the extra costs of HIV/AIDS. In the medium to long-term, these vulnerabilities will be significant in determining the extent to which the extra-cost of HIV/AIDS affects the financial feasibility of the housing policy. Of additional importance, was the finding that project-specific demographic impacts have the ability to disrupt project implementation, especially where critical paths roles are affected, and in those provinces in which sourcing key roles is currently difficult. The longer-term impacts will be felt primarily in terms of a reduced ability of provincial housing departments to effectively spend provincial budgets. This represents a sizeable risk as provincial budgetary allocations are aligned with the provinces' ability to spend their budget. In the long-term, this could lock budgetary allocation and expenditure in a decreasing vicious circle.